Customary Fisheries Area Management Tools

A guide for South Island Iwi and Tangata Tiaki/Kaitiaki

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1 INTRODUCTION

This guidebook is primarily written for South Island Iwi and Tangata Tiaki/Kaitiaki who wish to implement area management tools in their takiwā. Tāngata Whenua often ask themselves – what's best for us, a taiāpure, mātaitai or temporary closure or method restriction? They're all different and it really depends on what you want to achieve. This guidebook should assist Tāngata Whenua to choose the most appropriate tool to meet the objectives they have for the area they wish to manage.

Tāngata Whenua must first decide whether their objectives for fisheries management are best addressed at a local level or at an overall stock level. The Ministry of Fisheries (MFish) main focus is on ensuring the sustainable utilisation of a stock as a whole. This stock level approach does not always suit the needs of Tāngata Whenua and the management of local areas for customary food gathering. The area management tools (taiāpure, mātaitai, temporary closures) are better suited for addressing these local issues.

Tāngata Whenua wish to have their customary fishing rights recognised through increased access to fisheries resources and increased input and participation in fisheries management. Establishing area management tools is one way of achieving this input. However, in implementing these tools Tāngata Whenua are keen to ensure that the entire local community is involved. That way we can ensure that all New Zealanders can benefit from an abundant, healthy fishery.

Mō tātou, ā mō kā uri ā muri ake nei
For us and our children after us

2 THE HISTORY OF AREA MANAGEMENT TOOLS

Prior to 1840 and the signing of the Treaty of Waitangi, Tāngata Whenua exercised and managed their fisheries resources within the rohe for which they held manawhenua manamoana and maintained ahi kaa. The customary fisheries management practices enabled Tāngata Whenua to sustainably harvest and conserve their kaimoana. Traditional fisheries management practises included the use of area management for example rāhui.

Article Two of the Treaty of Waitangi guaranteed Tāngata Whenua the continued customary ownership of these property rights. For example the English version of the Treaty guarantees Tāngata Whenua "*full, exclusive and undisturbed possession of their lands, estates, forests, fisheries and other properties, which they may collectively or individually wish and desire to retain in their possession…"*

However, after the Treaty was signed Tāngata Whenua's ability to own and manage fisheries resources changed. Fisheries legislation between 1840 and 1983 recognised the existence of the customary fishing rights of Tāngata Whenua but these were largely defence provisions, they did not acknowledge the right of Tāngata Whenua to own and be involved in the management and control

of fisheries resources. This resulted in Tāngata Whenua being largely disenfranchised from fisheries management.

In 1986 the Ministry of Fisheries introduced the Fisheries Quota Management System as the means by which New Zealand would sustainably manage fisheries resources for present and future generations. In doing so the Crown established commercial property rights to fisheries resources in the form of quota.

Needless to say Tāngata Whenua were not happy and claimed to the High Court and the Waitangi Tribunal that the Quota Management System was a breach of the Treaty as it gave property rights that were customarily owned by Tāngata Whenua to commercial fishers in the form of quota.

The High Court found that:

"…by implementing the QMS the Crown had committed a fundamental breach of the Treaty of Waitangi by giving non-Māori a right which belonged to Māori and had not been acquired by the Crown."

The findings of the High Court clearly demonstrated that the customary fishing rights of Tāngata Whenua had both a commercial and non-commercial component. The Crown then recognised that a just and honourable settlement with Tāngata Whenua was required.

The negotiations for this redress led to an interim settlement in the form of the Māori Fisheries Act 1989. This Act was to make better provision for the recognition of Māori fishing rights secured by the Treaty of Waitangi. The Act split the commercial and non-commercial components of the customary right and then dealt with the interim redress issues for each separately.

The interim commercial redress included:
- 10% of quota of all fish species that were then subject to the QMS
- Shares in Moana Pacific

The interim non-commercial redress included the provision for taiāpure – local fisheries management area.

Negotiations continued between Tāngata Whenua and the Crown in order to resolve the outstanding claims and Treaty grievances. On September 23, 1992 the Treaty of Waitangi (Fisheries Claims) Settlement Act, commonly known as the Sealord Deal, was entered into between the Crown and those persons negotiating on behalf of iwi.

The Sealord Settlement confirmed the split of the customary right into commercial and non-commercial components, and dealt with each component

separately. The Sealord Settlement constituted full and final settlement of all Māori claims to commercial fishing rights and changed the status of non-commercial fishing rights *[preamble, TOW(FC)SA]*. The Crown's Treaty obligations to customary **commercial** fishing had been satisfied and discharged.

Components of the commercial settlement included:

- 50% share in Sealord Products Limited
- $150 million for the development and involvement of Māori in the fishing industry
- 20% of quota allocated to Māori for all new species brought under the QMS

The Sealord Settlement Act changed **non-commercial** fishing rights such that they no longer had legal effect, except to the extent that they were provided for under customary regulations, and that they continued to be subject to the principles of the Treaty and give rise to Treaty obligations on the Crown. Hence, the Minister of Fisheries is therefore required to act in accordance with the principles of the Treaty of Waitangi.

The Minister was required to promulgate regulations that recognised and provided for the customary fishing rights of Tāngata Whenua as guaranteed by the Treaty of Waitangi, and that provided Tāngata Whenua with the opportunity to manage their rights once more. The South Island customary fishing regulations were first promulgated in April 1998 under section 186 of the Fisheries Act 1996.

The regulations provide for Tāngata Whenua to manage customary food gathering **and** provide the framework for Tāngata Whenua to have input into fisheries management. The Minister of Fisheries is required to provide for the input and participation of Tāngata Whenua into key fisheries management processes and to have particular regard for kaitiakitanga under section 12(1)(b) of the Fisheries Act 1996.

The regulations also recognise and provide for the special relationship of Tāngata Whenua with the places of importance for customary food gathering (including tauranga ika and mahinga mātaitai), and as such provide the management framework for area management tools. The regulations therefore provide for mātaitai.

Pursuant to the Sealord Settlement Act the Minister is also required to develop policies to help recognise the use and management practises of Tāngata Whenua in the exercise of customary non-commercial fishing rights.

One such policy that has been given statutory effect under section 186B of the Fisheries Act 1996 as a result of the Ngāi Tahu Claim Settlement Act 1998, is the provision for temporary closures or method restrictions.

3 THE TOOLKIT

3.1 Taiāpure

A taiāpure is an area that has customarily been of special significance to an iwi or hapū as a source of food or for spiritual or cultural reasons. Taiāpure can be established over any area of estuarine or coastal waters to make better provisions for rangatiratanga and for the rights secured under Article Two of the Treaty. Taiāpure provisions are contained within sections 174-185 of the Fisheries Act.

As commercial fishing can continue in a taiāpure, this tool offers a way for Tāngata Whenua to become involved in the management of both commercial and non-commercial fishing in their area.

Taiāpure make provision for a management committee to be established to give advice and recommendations to the Minister of Fisheries for regulations to manage the fisheries in that area. Committee members are nominated by Tāngata Whenua and often include representatives from all fisheries stakeholders in the area, including commercial fishers. Commercial fishing can continue within a taiāpure and can be managed by the taiāpure committee.

Taiāpure regulations are similar to mātaitai bylaws – they can only be used to make specific laws relating to fishing, or fishing activities (as these are all that are managed by the Fisheries Acts) – activities such as jet skiing or swimming cannot be controlled through taiāpure regulations. Regulations cannot over-ride Acts and may only be made by people specified in the empowering Act, such as the Minister of Fisheries.

The regulations may relate to:

(a) The species of fish, aquatic life, or seaweed that may be taken;
(b) The quantity of each species that may be taken;
(c) The dates or seasons that each species may be taken;
(d) Size limits relating to each species to be taken;
(e) The method by which each species may be taken;
(f) The area or areas in which each species may be taken.

The effect of the taiāpure on the fisheries in the area, and on the people using those fisheries will depend on the controls that are established within the regulations.

The application process for a taiāpure might take longer than for a mātaitai. The application process for a taiāpure requires a hearing before the Māori Land Court. The process for establishing a taiāpure is set out in Appendix One.

3.1.1 Frequently asked questions about taiāpure

Q. *What is the discretion of the Minister in deciding whether to establish a proposed taiāpure?*
A. *The implementation of a taiāpure is totally at the discretion of the Minister after consultation with interest groups has been conducted by the Māori Land Court and after any appeals before the High Court have been disposed of.*

The Minister will assess the application in terms of its size, the impact it will have on the general welfare of the community, the impact of the taiāpure on those having a special interest, the impact of the taiāpure on recreational and commercial fishers and the impact of the taiāpure on fisheries management in general.

Q. *Once an application has been made for a taiāpure, what is the expected timeframe before the taiāpure can be gazetted?*
A. *Unknown, as unlike mātaitai applications there is no set timeframe for a taiāpure application. Refer to Appendix One for more details.*

Q. *Can commercial fishing be excluded from the taiāpure?*
A. *Yes, via the regulations that are developed by the Minister of Fisheries from the recommendations made by the management committee.*

Q. *Can external impacts on the fishery such as sewerage effluent discharge or nutrient run-off from adjacent land be managed through the taiāpure?*
A. *No, taiāpure can only manage fishing or fishing activity. However, the establishment of taiāpure provides Tāngata Whenua with a statutory recognition of their traditional relationship with the area concerned and as such provides them with a stronger case to be identified as an affected party under the RMA.*

The taiāpure would also add weight to any submission the Tāngata Whenua may make as the Council concerned must:

- *Recognise and provide for the relationship of Māori with their ancestral lands, water, wāhi tapu and other taonga as a matter of national importance;*
- *Have particular regard for kaitiakitanga;*
- *Have regard to any taiāpure regulations;*
- *Take into account the principles of the Treaty, such as, the right of Tāngata Whenua to exercise their rangatiratanga over their lands, resources and other taonga.*

Q. *What about marine farms?*
A. *Tāngata Whenua can not control and manage marine farms through a taiāpure. Taiāpure can however play a key role in the establishment of marine farms as farming applicants require a resource consent under the RMA to occupy*

coastal space and to ensure that the farm will not have any undue adverse effects on fishing or the sustainability of fisheries resources.

As stated above, the taiāpure provides Tāngata Whenua with a statutory recognition of their traditional relationship with the area concerned and therefore provides them with a stronger case to be identified as an affected party under the RMA, and bolsters any submissions you may make on the consent.

***Q.** What is the term of office for the management committee?*
***A.** The management committee holds office at the pleasure of the Minister.*

***Q.** Who will enforce the taiāpure regulations?*
***A.** Fisheries compliance is the role and function of MFish. However the management plan for the taiāpure should set out the compliance strategy that indicates the compliance needs of Tāngata Whenua.*

3.1.2 Content of a model taiāpure application

Justification for a taiāpure
The application should outline the customary significance of the area concerned, to the relevant iwi or hapū, as a source of food or for spiritual or cultural reasons. In outlining the traditional relationship with the area the application should clearly identify who the Tāngata Whenua are and provide an account of the historical and contemporary nature and extent of their customary fishing.

Objectives
The application should state the management objectives for the taiāpure. These objectives can be broken down into overall objectives and specific objectives.

Location and Boundaries
The application must clearly state the geographic location and boundaries of the proposed taiāpure so that the public can easily identify the area. Maps should be provided of the region and the specific area within which the proposed taiāpure is located. The boundaries of the proposed taiāpure should be clearly described with reference to latitude and longitude, and landmarks if possible. Compliance issues must be considered when designing the boundaries of the taiāpure (point to point boundaries are obviously easier to enforce).

The reasons for the boundaries should be given – the boundaries should relate to the traditional relationship Tāngata Whenua have with the area. A brief description of the history of the Tāngata Whenua and their historical nature and extent of fishing in the area is required. This information could be obtained from Māori Land Court records, Waitangi Tribunal evidence or reports or from interviewing Kaumātua, among other sources.

The Resource
The proposal must identify the species of fish, aquatic life and seaweed that are to be covered by the taiāpure.

Description of other users and interest groups
The application should identify all the user and interest groups and detail their current involvement in the area. The proposal should identify the effect the taiāpure is likely to have on these groups. It is also a good idea to outline any pre-application consultation that has been facilitated with these groups.

Management proposals
The proposal should state the management objectives (both overall and specific) and the policies to meet the objectives. This section should also outline draft strategies for information and compliance. Note however that it is not necessary to provide detail at this stage, as this is the role of the Taiāpure management committee. It is also advisable to provide the composition of the management committee in the application.

3.2 Mātaitai

The mātaitai provisions are set out in regulations 17-29 of the South Island Customary Regulations. The only persons who are able to apply for a mātaitai are the Tāngata Whenua or Tangata Tiaki/Kaitiaki, appointed under regulation 9, on behalf of the Tāngata Whenua if and when this is appropriate. The establishment process is set out in Appendix Two for your information.

A mātaitai identifies an area that is a place of importance for customary food gathering and allows the Tāngata Whenua to manage these areas. Mātaitai can be established over any area of the New Zealand fisheries waters of the South Island, including freshwater[1] and tauranga ika.

Tangata Tiaki/Kaitiaki are appointed by the Tāngata Whenua to manage the mātaitai. Bylaws may be established by Tangata Tiaki/Kaitiaki to assist with the management of the mātaitai. However, it may be possible to achieve the objectives for the mātaitai without establishing bylaws. For example, the fishery may recover to the desired state by virtue of its non-commercial status alone.

Mātaitai bylaws are similar to taiāpure regulations – they can only be used to make specific laws relating to fishing, or fishing activities.

[1] The customary fishing regulations apply to all species managed under Fisheries legislation. Although the external impacts on the freshwater fishery, such as nutrient run-off or bad riparian management, are not able to be managed through the mātaitai, mātaitai serve as a legislative acknowledgement of the cultural and historical relationship Tāngata Whenua have with the area concerned. Mātaitai therefore provide a similar opportunity for advocacy under the RMA as provided by Statutory Acknowledgement Areas under the Ngāi Tahu Settlement Act.

Bylaws may relate to:
(a) The species of fish, aquatic life, or seaweed that may be taken;
(b) The quantity of each species that may be taken;
(c) The dates or seasons that each species may be taken;
(d) Size limits relating to each species to be taken;
(e) The method by which each species may be taken;
(f) The area or areas in which each species may be taken;
(g) Any other matters the Tangata Tiaki/Kaitiaki considers necessary for the sustainable management of fisheries resources in the Mātaitai.

By passing bylaws, these traditional management practises become law.

However, the species to which a restriction or prohibition relate must be those managed under the Fisheries Act 1983, the Fisheries Act 1996, or regulations made under either or both of those Acts. So, for example bylaws cannot be made which apply to whitebait, because these are managed under conservation legislation.

These bylaws must be approved by the Minister of Fisheries and must apply generally to all individuals. However, if a bylaw stops fishing generally, the Tangata Tiaki/Kaitiaki still has the ability to authorise customary fishing to sustain the functions of the marae or for the purposes of managing the mātaitai.

For a detailed guide on how to develop bylaws please refer to the Mātaitai Reserve Bylaws Guide for Tangata Tiaki/Kaitiaki, developed by the Ministry of Fisheries.

A mātaitai prohibits commercial fishing within its boundaries. However, the Minister may allow for commercial fishing in the mātaitai through regulations should Tangata Tiaki/Kaitiaki (on behalf of Tāngata Whenua) indicate that this is desirable. For example, Tāngata Whenua may request the Minister to allow for commercial fishing of certain species within the mātaitai in such quantities and for such times as may be consistent with the management objectives.

There are four important points to be noted about the establishment of mātaitai:
1. The process for establishing a mātaitai is fully inclusive of the local community
2. Amateur regulations continue to apply within the reserve subject to bylaws.
3. The process for establishing bylaws is fully inclusive of the local community
4. Bylaws can only be developed to address fisheries sustainability issues they cannot be used to exclude non-Tāngata Whenua from accessing the fishery.

A management plan should be developed for the mātaitai that sets out the management objectives and the strategies and rules for achieving the objectives, including bylaws if any and an information and compliance strategy.

The regulations do not prevent Tāngata Whenua from establishing advisory/management committees to support Tangata Tiaki/Kaitiaki in managing the mātaitai. Tangata Tiaki/Kaitiaki will generally be members of the Tāngata Whenua, but the establishment of an advisory/management committee is an effective way of enlisting the support and assistance of the wider local community.

Voluntarily involving the wider local community in the management of the mātaitai will give all members of the community a sense of belonging and will assist with voluntary compliance of mātaitai bylaws.

Possible duties for the management committee include:
- The development, implementation and review of the management plan for the mātaitai;
- Reviewing research and stock assessment information;
- Advising Tangata Tiaki/Kaitiaki on potential bylaws.

However, Tāngata Whenua must ensure that Tangata Tiaki/Katiaki have sole responsibility for issuing customary authorisations, managing customary fishing and advising the Minister of Fisheries of proposed bylaws.

3.2.1 Frequently asked questions about mātaitai

Q. *What is the discretion of the Minister in deciding whether to establish a proposed mātaitai?*
A. *The ONLY criteria the Minister may apply in deciding whether to declare a mātaitai are set out in regulation 20(1) – The Minister MUST declare an area to be a mātaitai if satisfied that:*

(a) There is a special relationship between the Tāngata Whenua and the proposed reserve;
(b) The general aims of management are consistent with the sustainable management of the area concerned;
(c) The proposed mātaitai is an identified fishing ground and is an appropriate size for effective management;
(d) The Minister and Tāngata Whenua are able to agree on suitable conditions;
(e) The proposed mātaitai will not:
(i) Unreasonably affect the ability of local community to take fisheries resources for non-commercial purposes; or

(ii) *Prevent those with a commercial interest in a species from taking their quota or annual catch entitlement (ACE) from within the quota management area (QMA) for that species; or*

(iii) *Prevent those with a commercial fishing permit for non-QMS species from taking those species within the area that the permit applies;*

(f) The proposed mātaitai is not a Marine Reserve.

***Q.** Is there a limit on the size of a mātaitai?*
***A.** The mātaitai must be of an appropriate size for effective management by Tāngata Whenua and the mātaitai cannot prevent commercial fishers from taking their quota or ACE from the QMA for that species or prevent commercial fishers with a permit from taking non-QMS species from within the area of that permit.*

***Q.** Once an application has been made for a mātaitai, what is the expected timeframe before the mātaitai can be gazetted?*
***A.** Tāngata Whenua should expect the processing of the application, including public consultation, to take at least 9 months. This will of course depend on the level of support for the application shown by the local community and recreational and commercial fishers. It is therefore essential that Tāngata Whenua discuss the mātaitai proposal with these groups prior to lodging the formal application. Refer to Appendix Two for more details.*

***Q.** Can a mātaitai limit the local communities access to use the beach?*
***A.** No, the creation of a mātaitai can only manage fishing in an area. Mātaitai have no ability to manage access to the beach or to private land.*

***Q.** Will recreational fishers be excluded from fishing, or will they need an authorisation to go fishing?*
***A.** No, recreational fishers can continue to fish as they always have, unless a bylaw is implemented that changes some aspects of fishing like bag limits or size restrictions.*

Bylaws will apply equally to everyone, however, in the case of a total closure Tangata Tiaki/Kaitiaki may still authorise for customary fishing to sustain the functions of the marae or for mātaitai management purposes.

***Q**. What are bylaws?*
***A.** Bylaws are rules that are created to manage the fishing within a mātaitai. The Tāngata Tiaki that have been appointed for a mātaitai propose them. Any bylaw that may be created is required to go through a public consultation process where submissions are sought. The Minister of Fisheries then considers them and may agree to make them into law.*

Q. *What sort of things can bylaws cover?*
A. *Bylaws can cover the management of anything that is managed under the Fisheries Act 1996, and those species that are within the scope of the customary fishing regulations. They can only be used to assist sustainable utilisation of fisheries resources, they can not be used to exclude non-Tāngata Whenua from utilising fisheries resources.*

Q. *What about exotic fish species, can I control and manage trout in a freshwater mātaitai?*
A. *No, as stated above*, *bylaws only apply to species managed under the Fisheries Act 1983, the Fisheries Act 1996, or regulations made under either or both of those Acts. Sports fish are managed under the Conservation Act.*

Q. *Is Commercial Fishing allowed in a mātaitai?*
A. *When a mātaitai is declared, there is no commercial fishing allowed in the mātaitai. If Tāngata Whenua wish to include commercial fishing in the mātaitai, the Tāngata Tiaki/Kaitiaki for that Mātaitai Reserve can request that the Minister of Fisheries develop regulations that will permit commercial fishing.*

Q. *Can external impacts on the fishery such as sewerage effluent discharge or nutrient run-off from adjacent land be managed through the mātaitai?*
A. *No, mātaitai can only manage fishing or fishing activity. However, the establishment of mātaitai provides Tāngata Whenua with a statutory recognition of their traditional relationship with the area concerned and as such provides them with a stronger case to be identified as an affected party under the RMA.*

The mātaitai would also add weight to any submission the Tāngata Whenua may make as the Council concerned must:

- *Recognise and provide for the relationship of Māori with their ancestral lands, water, wāhi tapu and other taonga as a matter of national importance;*
- *Have particular regard to kaitiakitanga;*
- *Have regard to any mātaitai bylaws;*
- *Take into account the principles of the Treaty, such as, the right of Tāngata Whenua to exercise their rangatiratanga over their lands, resources and other taonga.*

Q. *What about marine farms?*
A. *Tāngata Whenua can not control and manage marine farms through mātaitai. Mātaitai can however play a key role in the establishment of marine farms as farming applicants require a resource consent under the RMA to occur coastal space and to ensure that the farm will not have any undue adverse effects on fishing or the sustainability of fisheries resources.*

As stated above, the mātaitai provides Tāngata Whenua with a statutory recognition of their traditional relationship with the area concerned and therefore

provides them with a stronger case to be identified as an affected party under the RMA, and bolsters any submissions you may make on the consent.

***Q.** Will I need a resource consent to conduct various operations within the mātaitai?*
***A.** That depends on the activity and the regional coastal plan.*

***Q.** What are the penalties for committing an offence against this provision?*
***A.** Offenders are liable for a fine of up to $10,000 on the first offence and $20,000 on subsequent offences.*

***Q.** Who will enforce the bylaws of the mātaitai and the mātaitai itself?*
***A.** Fisheries compliance remains the role and function of MFish. However the management plan for the mātaitai should set out the compliance strategy that indicates the compliance needs of Tāngata Whenua.*

***Q.** Can the local community be involved in the management of the mātaitai?*
***A.** The regulations recognise and provide for Tāngata Whenua to manage the areas of significance to them for customary fishing. It is therefore up to Tāngata Whenua to decide what the level of local community input shall be. Most mātaitai and mātaitai applications within the Ngāi Tahu Whānui Takiwā have outlined the need for local community input into the management.*

3.2.2 ***Content of a model mātaitai application***

Tāngata Whenua or Tangata Tiaki/Kaitiaki must use Form 4 (at the back of the customary regulations) when applying for a mātaitai. Forms are available from the MFish Offices in Dunedin or Nelson.

Applicant
The application must clearly identify the Tāngata Whenua grouping (or their representative body) or Tangata Tiaki/Kaitiaki making the application.

Location and boundaries
The application must state the geographic location and boundaries of proposed mātaitai. Tāngata Whenua should describe the area with reference to latitude and longitude, and landmarks if possible. For example:

> The geographic area of the mātaitai is all waters of Te Whanga lying west of a line drawn from Scotty's Rock (at Lat 43°49.825'S and Long 172°54.610'E) to the head of Ezekiel Bay (at Lat 43°47.8'S and Long 172°55.65'E). (See attached map)

A Global Position System (GPS) may be useful for establishing latitudes and longitudes (if you do not have a GPS, a local fisher or Honorary Fishery Officer may assist you or let you use their equipment). A map of the site must be attached (a map of the district, eg, Bank's Peninsula is also useful).

Compliance considerations are something Tāngata Whenua need to think about when setting the boundaries of the mātaitai (point to point boundaries are obviously easier to enforce).

Traditional fishing relationship with the fishing ground
The application must state the traditional fishing relationship Tāngata Whenua have with the fishing ground. A brief description of the history of the Tāngata Whenua and their historical nature and extent of fishing in the area is required. This information could be obtained from Māori Land Court records, Waitangi Tribunal evidence or reports or from interviewing Kaumātua, among other sources.

Aims of management
The application must state the aims and objectives of management. These must be consistent with the sustainable manage of the fishery within the proposed mātaitai. The application must show that the size of the proposed mātaitai is appropriate for effective management by Tāngata Whenua.

Tangata Tiaki/Kaitiaki to manage the mātaitai
The application must state the names of the Tangata Tiaki/Kaitiaki who are nominated to manage the mātaitai.

Management Plan
It is best practise for Tāngata Whenua or Tangata Tiaki/Kaitiaki to attach a draft management plan for the mātaitai to the application. The draft management plan should set out the background and history of the mātaitai, the aims and objectives of management, the strategies and rules that may be adopted to meet the objectives (including the compliance and information strategies) and the "services" or operations (such as research and enforcement) that must be undertaken to support the strategies.

3.3 Temporary closures and method restrictions

Section 186B of the Fisheries Act 1996 allows the Chief Executive to temporarily close or temporarily restrict or prohibit a method of fishing in any area within the New Zealand Fisheries Waters of the South Island, including freshwater and tauranga ika.

The purpose of the closure or method restriction is to improve the size and/or availability of fish stocks that have been depleted, or to recognise and provide for the use and management practises of Tāngata Whenua. Temporary closures or method restrictions may provide legal support for a rāhui.

Anybody can suggest to MFish that a temporary closure or method restriction should be put in place, however the Chief Executive must be sure that it will meet the intended purpose before implementing it. Hence the Chief Executive must

provide for the input and participation of Tāngata Whenua and have regard for kaitiakitanga when assessing a proposal.

Temporary closures or method restrictions can be applied for a period not exceeding two years and can apply to particular days, weeks, months or seasons within that two year period. If the objectives for which the rāhui was put in place are not achieved over the period that it was in place for, Tāngata Whenua can apply for the rāhui to be extended for further rotations.

Temporary closures or method restrictions apply to everyone, including customary fishers. Refer to Appendix Three for the establishment process for 186B closures.

3.3.1 Frequently asked questions about temporary closures

Q. *What is the discretion of the Chief Executive in deciding whether to establish a proposed 186B closure or restriction?*
A. *Implementation of a temporary closure or method restriction is totally at the discretion of the Chief Executive after consultation with interest groups, including commercial, recreational, local community and Tāngata Whenua.*

The Chief Executive will assess the proposal in terms of its size, the impact on recreational and commercial fishers and the impact on fisheries management in general.

***Q.** Once a proposal has been made for a temporary closure or method restriction, what is the expected timeframe before it can be gazetted?*
***A.** There is no set process for assessing a 186B proposal and therefore no set timeframes. However, as an indication Tāngata Whenua should expect the processing of a proposal, including public consultation, to take at least 9 months – as with mātaitai. Refer to Appendix Three for more details.*

***Q.** What are the costs for Tāngata Whenua in establishing a temporary closure or method restriction?*
***A.** The main costs of developing and implementing such a proposal is in the time that must be invested by members of the Tāngata Whenua. Financial costs should be small.*

***Q.** What are the penalties for committing an offence against this provision?*
***A.** Offenders are liable for a fine of up to $100,000. However, if the offender(s) can prove the offence was for non-commercial purposes then a fine of up to $5000 could be imposed.*

***Q.** Who will enforce this provision?*
***A.** Fisheries compliance remains the role and function of MFish.*

3.3.2 Content of a model 186B proposal

Outline the problem

The proposal should state what the problem is in the fishery concerned, and how the use and management practises of Tāngata Whenua are being affected.

Justification for a 186B closure or restriction

The proposal should state why a 186B is the most appropriate tool to address the issues associated with the area and the aims and objectives of management. The proposal must highlight the likelihood of the objectives being attained within two years. The proposal should outline why mātaitai, taiāpure or voluntary measures could not be more effective.

Location and boundaries

The proposal must state the geographic location and boundaries of proposed 186B. As with mātaitai, Tāngata Whenua should describe the area with reference to latitude and longitude, and landmarks if possible. And compliance issues must be considered when designing the boundary.

Impact on other user groups

The proposal should identify all the user groups and detail their current involvement in the area. The proposal should identify the effect the closure or restriction is likely to have on these groups. It is also a good idea to outline any pre-proposal consultation that has been facilitated with these groups.

4 WHAT TOOL IS BEST? – CHOOSING BETWEEN THE TOOLS

4.1 Main differences

4.1.1 Purpose

Taiāpure

Taiāpure were devised to make better provision for tino rangatiratanga and the fisheries rights secured under Article Two of the Treaty of Waitangi. This can include the management of commercial and non-commercial fishing.

Mātaitai

Mātaitai were devised to recognise and provide for the use and management practises of the Tāngata Whenua and special relationship between them and places of importance for customary food gathering. Mātaitai identify these traditional fishing grounds and allow Tāngata Whenua to manage non-commercial fishing in the area through bylaws. Commercial fishing is prohibited.

186B

186B – temporary closures and method restrictions were devised to improve the size and/or availability of fish stocks or to recognise and provide for the use and management practises of Tāngata Whenua by giving legal effect to rāhui. The 186B applies to all fishers including customary.

4.1.2 Location

Taiāpure

Taiāpure can be established in estuarine and littoral coastal waters that have customarily been of significance to an iwi or hapu either as a source of food or for spiritual or cultural reasons. Taiāpure will generally occupy a more substantial area than mātaitai as commercial fishing can continue within a taiāpure.

Mātaitai

Mātaitai can be established in any area of the New Zealand fisheries waters of the South Island, including freshwater. The mātaitai must be of an appropriate size for effective management by Tāngata Whenua and the mātaitai cannot prevent commercial fishers from taking their quota or ACE from the QMA for that species or prevent commercial fishers with a permit from taking non-QMS species from within the area of that permit.

186B

186B – temporary closures or method restrictions can be established in any area of the New Zealand fishing waters of the South Island, including freshwater. The size of a 186B will depend on the impact on fishers.

4.1.3 Establishment Process

Taiāpure

The application process and timeframe is **not so clearly defined** for taiāpure. The Māori Land Court conducts a public hearing and any recommendations may be appealed to the High Court. The taiāpure application process may be very lengthy if any aggrieved parties seek legal appeals. Refer to Appendix One for more details.

Mātaitai

The establishment process for mātaitai is **clearly defined** in the customary regulations. There are clear timeframes by which the Minister must make decisions at each stage in the process. Tāngata Whenua should expect the processing of an application, including public consultation, to take at least 9 months. Refer to Appendix Two for more details.

186B

There is **no set process** for assessing a 186B proposal and therefore no set timeframes. The timeframe and consultation process will depend on the issues involved in the proposal. However, as an indication Tāngata Whenua should expect the processing of a proposal, including public consultation, to take at least 9 months – as with mātaitai. Refer to Appendix Three for more details.

4.1.4 Minister's (or Chief Executive's) Discretion

Taiāpure

The Minister's discretion when assessing a taiāpure application is **far broader**. The Minister SHALL NOT declare an area to be a taiāpure unless satisfied that:

(a) The proposed taiāpure will make better provision for rangatiratanga; and
(b) The taiāpure is "appropriate" having regard to:

(i) The size of the area to be declared;
(ii) The impact of the taiāpure on the "general welfare" of the community;
(iii) The impact on those having a "special interest";
(v) The impact on fisheries management

Mātaitai

The Minister's discretion when assessing a mātaitai application is **clearly defined** under regulation 20 of the customary regulations. The criteria relate to the impact the mātaitai will have on fishers (both commercial and non-commercial). The Minister MUST declare an area to be a mātaitai if satisfied that:

(a) There is a special relationship between the Tāngata Whenua and the proposed reserve;
(b) The general aims of management are consistent with the sustainable management of the area concerned;
(c) The proposed mātaitai is an identified fishing ground and is an appropriate size for effective management;
(d) The Minister and Tāngata Whenua are able to agree on suitable conditions;
(e) The proposed mātaitai will not:
    (i) Unreasonably affect the ability of local community to take fisheries resources for non-commercial purposes; or
    (ii) Prevent those with a commercial interest in a species from taking their quota or annual catch entitlement from within the quota management area for that species; or
    (iii) Prevent those with a commercial fishing permit for non-QMS species from taking those species within the area that the permit applies;
(f) The proposed mātaitai is not a Marine Reserve.

186B

The discretion of the Chief Executive when assessing a 186B closure or method restriction is **not clearly defined**. Although, the chief executive must consult the representatives of interested parties; including Tāngata Whenua, environmental, commercial, recreational and local community interests.

4.1.5 Control and Management

Taiāpure

Taiāpure are managed by a committee nominated by the Tāngata Whenua. The committee have the power to provide advice and make recommendations to the Minister for the development of regulations to manage fishing (commercial and non-commercial) in the taiāpure. The regulations may relate to similar issues as mātaitai bylaws, although obviously commercial fishing can also be managed and management within a mātaitai will generally be at a finer scale.

The taiāpure provisions make no mention of a public consultation process on proposed regulations. The management committee holds office at the pleasure of the Minister.

Mātaitai

Mātaitai are managed by Tangata Tiaki/Kaitiaki on behalf of Tāngata Whenua. Tangata Tiaki/Kaitiaki may develop bylaws (that must be approved by the Minister of Fisheries) to manage the mātaitai although bylaws may not be necessary in all mātaitai – the creation of a non-commercial fishery may be sufficient. Bylaws are similar to regulations – they can only be used to make specific fishing laws such as bag limits.

Only non-commercial fishing may be managed in a mātaitai. However, Tangata Tiaki/Kaitiaki may request the Minister to develop regulations to allow for limited commercial fishing in the mātaitai.

The mātaitai provisions set out a clear public consultation process for draft bylaws. Bylaws must apply generally to all fishers. Bylaws may relate to:

(a) The species of fish, aquatic life, or seaweed that may be taken;
(b) The quantity of each species that may be taken;
(c) The dates or seasons that each species may be taken;
(d) Size limits relating to each species to be taken;
(e) The method by which each species may be taken;
(f) The area or areas in which each species may be taken;
(g) Any other matters the Tangata Tiaki/Kaitiaki considers necessary for the sustainable management of fisheries resources in the Mātaitai.

186B

The *Gazette* notice that establishes a 186B – temporary closure or method restriction is the control itself. The 186B provisions do not clearly set out provisions for public consultation on a proposed closure or method restriction, however, the Chief Executive must consult with the representatives of interested parties. The closure or method restriction is a temporary measure not exceeding two years.

4.2 Recommended tool

If Tāngata Whenua wish to close a fishery or restrict the use of a particular method **temporarily** a 186B is the obvious choice. To establish **perpetual** management of an area, Tāngata Whenua need to apply for a mātaitai or taiāpure.

If Tāngata Whenua want to **manage commercial fishing** then the taiāpure is the better tool to use, rather than reinstating commercial fishing into a mātaitai. Taiāpure is also most appropriate where the area you want to manage is of such a size that it is likely to **prevent commercial fishers** from taking their quota or ACE from within the QMA for that species or prevent commercial fishers with a permit for non-QMS species from taking those species from within the area of that permit. (Note: This assumes that the area to be managed is in estuarine or coastal waters – remember that taiāpure cannot be established outside of these waters, such as in freshwater).

In **all other circumstances** establishing a mātaitai is recommended because:

- The mātaitai establishment process is the simplest and most clearly defined of the three tools;
- The Minister's discretion when making the final decision on the mātaitai is very clearly defined;
- The process for implementing bylaws is simple, clearly defined and fully inclusive of the local community.
- Generally speaking, mātaitai is the most empowering tool for as it devolves greater management responsibility back to the Tāngata Whenua.

5 INTEGRATION/COORDINATION BETWEEN THE AREA MANAGEMENT TOOLS

Integration

The area management tools are very flexible, all can operate as a stand-alone unit and some can operate in conjunction with other tools. For example, Tāngata Whenua may wish to establish mātaitai within an existing taiāpure in order to enhance customary food gathering, by making these areas non-commercial.[2]

Establishing a mātaitai within a taiāpure may also allow Tāngata Whenua to adopt a "micro-management" approach[3], such that the mātaitai allows for very

[2] The customary regulations over-ride any other regulations made under the Fisheries Act. Hence, by establishing a mātaitai within a taiāpure, the mātaitai bylaws would over-ride the taiāpure regulations for that particular area.

[3] The "macro-management" approach could be seen as the management of all fisheries within New Zealand's 200nm exclusive economic zone. Beneath this you have various management levels from the stock-based management regime of a QMA, to localised management through a taiāpure and further to the reef-by-reef management of a mātaitai.

intensive reef-by-reef management, through the bylaws, of these defined areas of special significance.

Also, Tāngata Whenua have sometimes used a 186B temporary closure in preparation for the establishment of a mātaitai. The two-year closure of the fishery has allowed Tāngata Whenua the breathing space to conduct baseline research and to process the mātaitai.

The following table provides a breakdown of the relationship between the tools:

	Within Mātaitai	Within Taiāpure	Within Rāhui
Mātaitai		Possible – Tāngata Whenua may use mātaitai within a taiāpure for the reasons outlined above.	
Taiāpure	Technically possible but highly unlikely.		
Temporary closure or method restriction	Technically possible, but the mātaitai bylaws can perform the same function as the closure or method restriction.	Technically possible, but the taiāpure regulations can perform the same function as the closure or method restriction.	Technically possible to have overlapping method restrictions, but highly unlikely.

Coordination

Area management tools should be established in a coordinated and planned manner in order to maximise the fisheries management outcomes and the protection of mahinga kai areas and wāhi tapu.

Also, each gazetted AMT will impact on any other AMT applications within in a given QMA. This is especially true for mātaitai applications, as the Minister of Fisheries is required to assess whether the proposed mātaitai will prevent commercial operators from taking their quota (or permit entitlement for non-QMS species) within the particular QMA. Hence, if other mātaitai have already been gazetted in that QMA they will impact on the Minister's decision.

Therefore Tāngata Whenua are best to coordinate their AMT proposals as a collective to prevent the 'first in best dressed' scenario occurring. An ideal mechanism to coordinate AMT applications is a Tangata Tiaki/Kaitiaki management plan (refer to section 6.3) or a Fisheries Plan (section 6.2).

6 INTEGRATION WITH OTHER PROCESSES AND TOOLS

6.1 Sustainability Measures Process

Under the Quota Management System, the Ministry's main focus is on ensuring the sustainable utilisation of a stock as a whole. The Ministry addresses the wider fish stock sustainability issues through the Sustainability Measures process.

Management at a stock level can often lead to local depletions in areas that are of significance for customary food gathering. Thus, although it is not a "sustainability" issue, it is having an impact on customary practise and must therefore be dealt with in another manner. The area management tools of Tāngata Whenua are ideal for addressing these local issues.

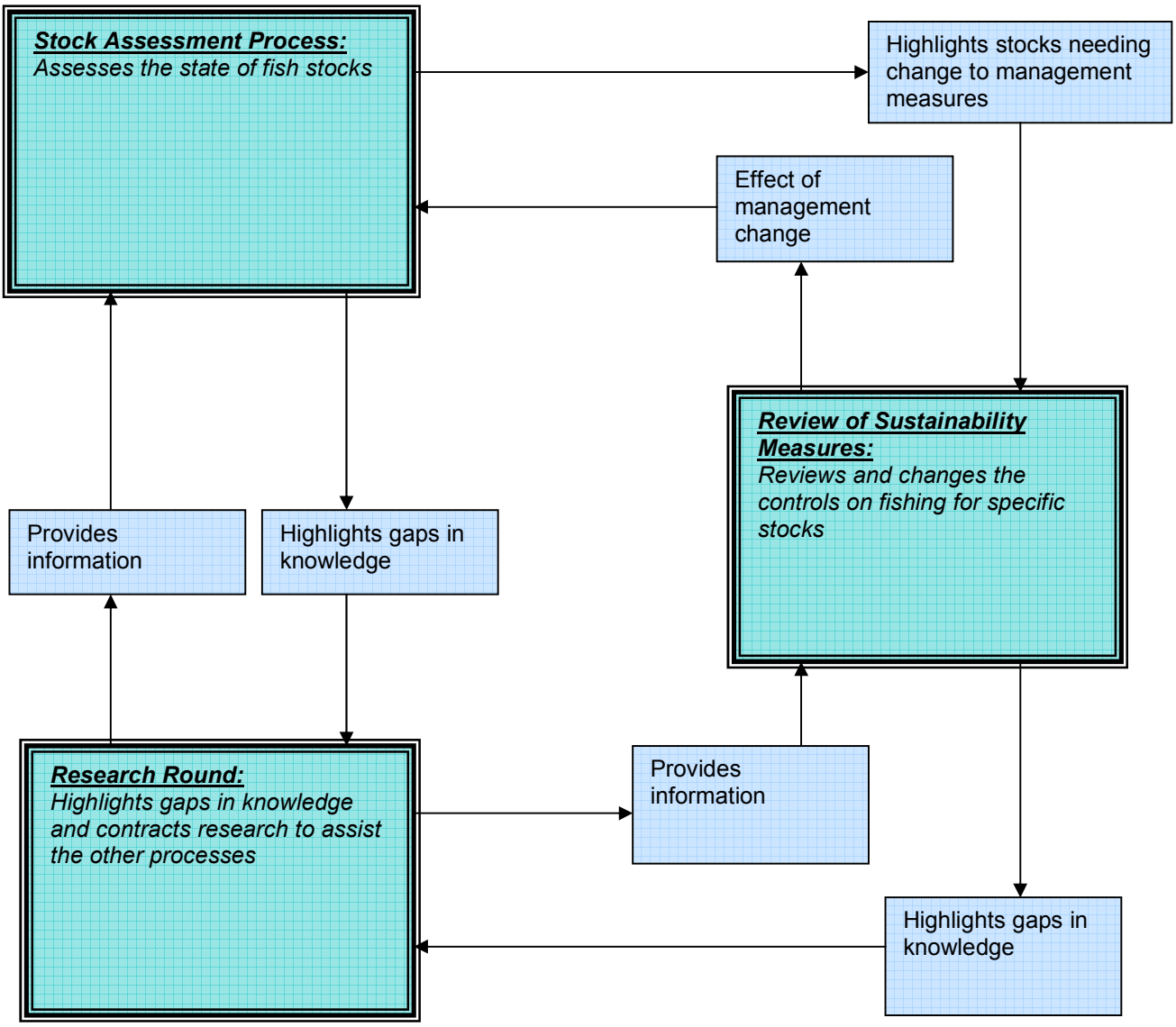
However, local management will also impact on a stock as a whole. Therefore it is essential that the Ministry and Tāngata Whenua work together to address both local and stock management issues. The point where the Ministry and Tāngata Whenua come together is within the Sustainability Measures process.

Under section 12(1)(b) of the Fisheries Act 1996 the Minister must provide for the input and participation of Tāngata Whenua and have particular regard for kaitiakitanga before making any decisions under the sustainability measures section of the Act.

The Ministry of Fisheries runs two Sustainability Measures processes each year. The main process runs to a 1 October cycle, and the second process runs to a 1 April cycle. Most species that require amendments to their management regime are discussed in the 1 October cycle. Species such as rock lobster and southern blue whiting are discussed in the 1 April round. All other main MFish processes, for example stock assessment and research planning, revolve around the sustainability measures process.

To reiterate, it is important that Tāngata Whenua have input into these processes because some key management decisions are made through them and these decisions may have a number of implications for Tāngata Whenua in terms of how they want to manage the fishery in their rohe.

The first decision for Tāngata Whenua will be deciding what is a local issue and what is stock based, as they will need to progress each issue in a different manner. If the issue is stock based then they must progress it through the Sustainability Measures process. Refer to Appendix Five for the processes for reviewing Sustainability Measures and other management controls, to obtain the key dates for input into these processes.



Adopted from the MFish Tangata Tiaki/Kaitiaki Training Manual

6.2 Fisheries Plans

Fisheries plans are formulated to make better provision for the purpose and principles of the Fisheries Act. As such fisheries plans also tend to focus on the management of stock at a QMA level rather than local management. However, fisheries plans may provide for both dimensions and Tāngata Whenua should look to incorporate their concerns at the local level into a plan.

The ability of fisheries plans to look at both the stock and local dimensions makes them an incredibly important tool for Tāngata Whenua to be actively involved in the management of the fishery as a whole. Fisheries plans can serve as a co-ordination mechanism for Tāngata Whenua who want to look at a series of area management tools in conjunction with other measures.

Under section 12(1)(b) of the Fisheries Act 1996 the Minister must provide for the input and participation of Tāngata Whenua and have particular regard for kaitiakitanga before approving any fisheries plan under section 11A of the Act.

Part IX of the Fisheries Act 1996 provides for the declaration of taiāpure, temporary closures and provides for the making of regulations (ie: the South Island Customary Regulations) for customary fishing including mātaitai. **None of these provisions may be over-ridden by a fisheries plan**.

However, under section 11 of the Fisheries Act the Minister must take a fisheries plan 'into account' when making any decisions to regulate or control fishing. Clearly the establishment of mātaitai, temporary closures and taiāpure may have a profound affect on the operations of a fisheries plan. Therefore it is essential that proponents of a fisheries plan fully involve Tāngata Whenua in the development of the plan to ensure the objectives and aspirations of Tāngata Whenua are incorporated into the plan.

Incorporating area management tools within fisheries plans will also assist other stakeholder groups to accept these tools as a sustainability measure.

6.3 Tangata Tiaki/Kaitiaki Management Plans

The management plans that may be developed by Tangata Tiaki/Kaitiaki under Regulation 16 of the South Island Customary Regulations may also be used to co-ordinate the establishment of area management tools within the area for which the Tangata Tiaki/Kaitiaki has management responsibility. These management plans should be developed jointly if there is more than one Tangata Tiaki/Kaitiaki responsible for managing the area concerned.

6.4 Iwi Management Plans

To protect inshore fisheries especially shellfish beds, for example cockles, it is often necessary to manage the external influences on the fishery such as effluent discharge, run-off and so on. Such external influences on the fishery can not be controlled under fisheries legislation and it is therefore necessary to take action under the Resource Management Act 1991.

To have the best effect under the RMA, Tāngata Whenua should look to implement the appropriate sections within an existing Iwi Management Plan or develop such a plan where none exists. It should be noted here that a Fisheries Plan or Tangata Tiaki/Kaitiaki management plan becomes an Iwi Management Plan if approved by the appropriate Iwi Authority.

Tāngata Whenua can refer to "Te Rāranga a Mahi", a resource developed by Ngāi Tahu, Beca, Wellington Tenths Trust and the Ministry for the Environment, for assistance in developing Iwi Management Plans.

6.5 Marine Reserves

Marine reserves are established under the Marine Reserves Act. They are established to preserve areas of sea and foreshore in their natural state for scientific study. Taiāpure, mātaitai or 186B closures cannot be applied for within a marine reserve.

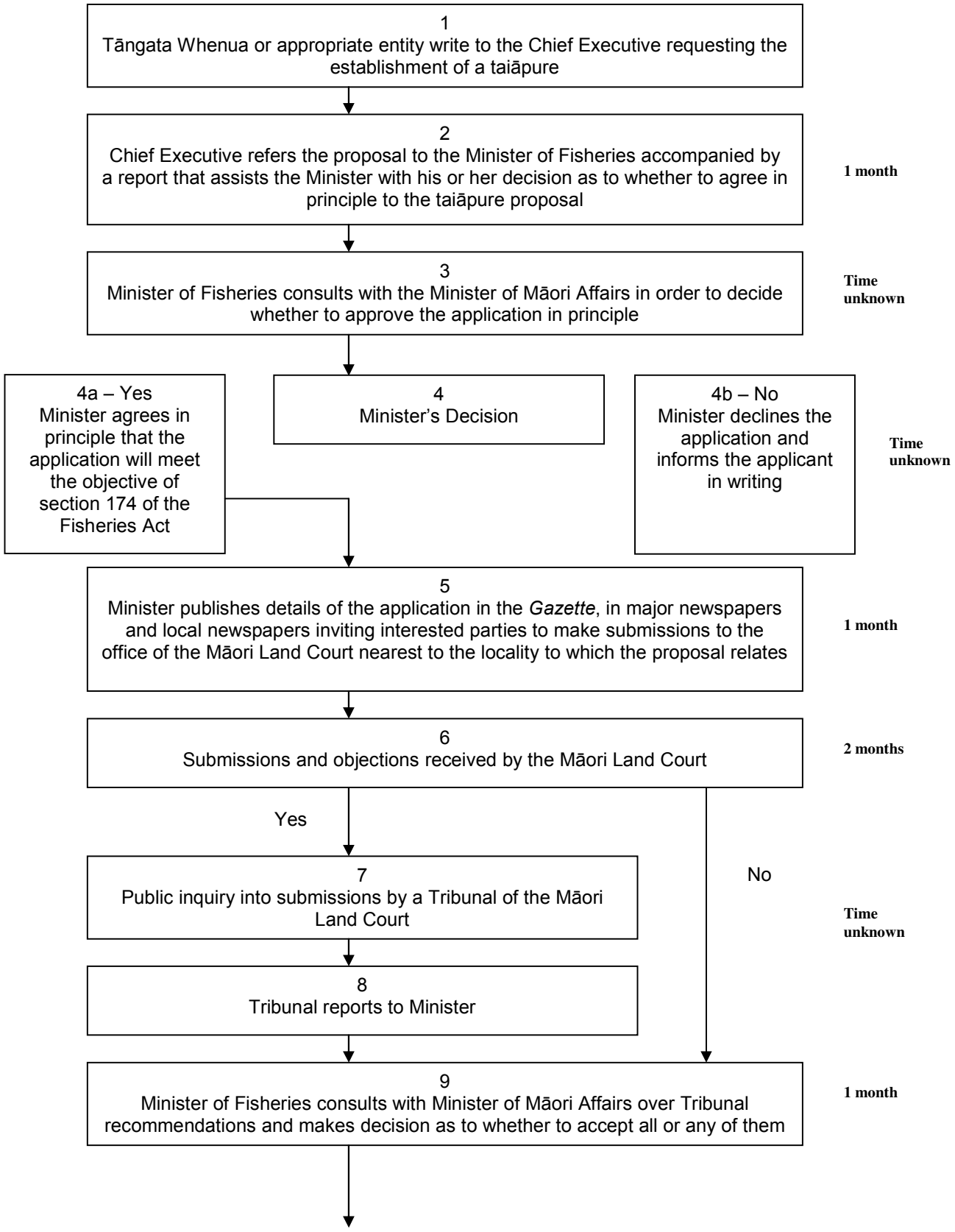
6.6 Marine Mammal Sanctuaries

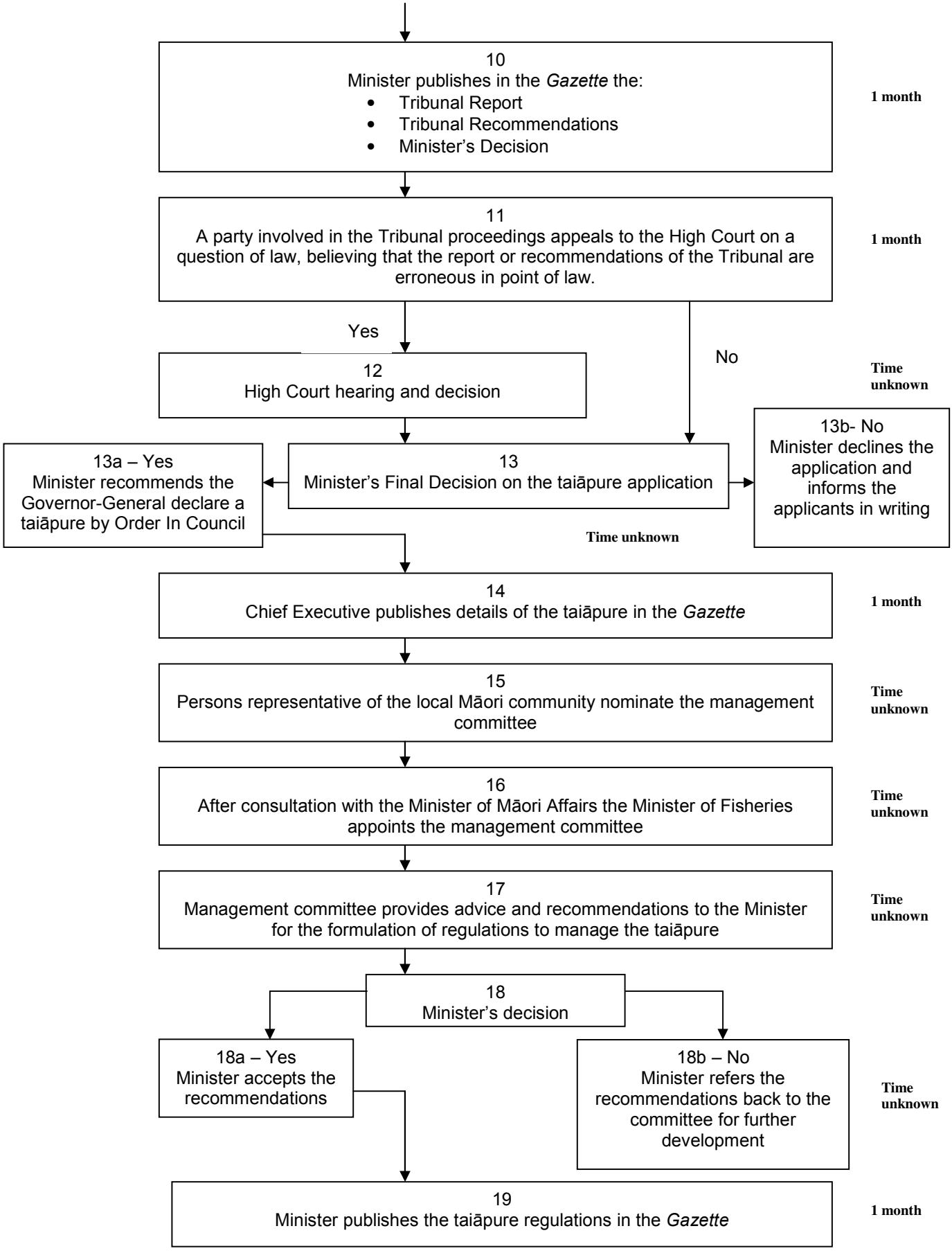
These sanctuaries are established to protect marine mammals such as Hector's Dolphin. Generally, these sanctuaries and the area management tools can co-exist in the same area – although Tāngata Whenua must be aware that the rules established in a marine mammal sanctuary **override** the rules established in the area management tool. For example, if a sanctuary established a seasonal set net ban, the area management tool could not allow for that method of fishing in that season.

APPENDICES

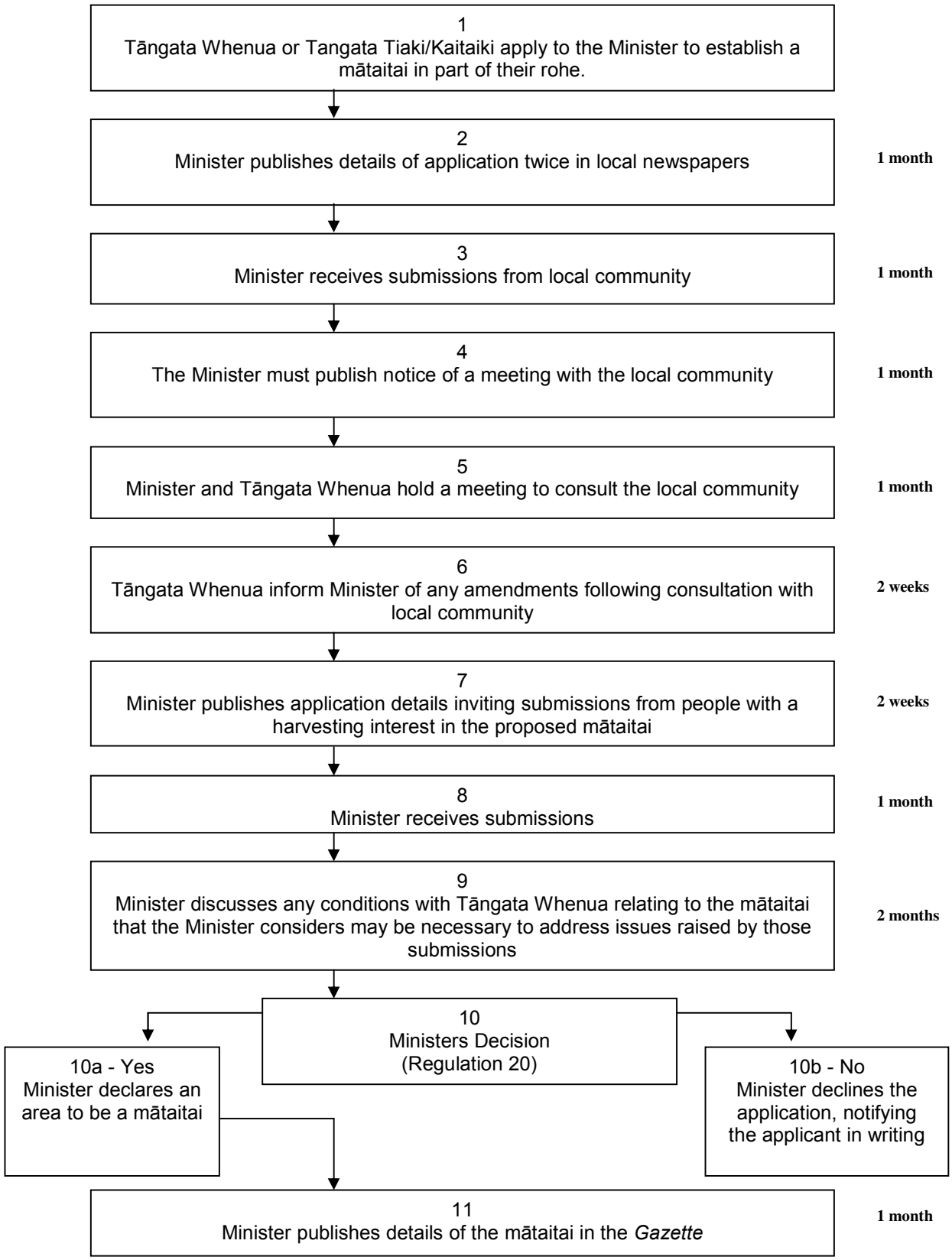
Appendix one:	Establishment process for taiāpure
Appendix two:	Establishment process for mātaitai
Appendix three:	Establishment process for temporary closures or method restrictions
Appendix four:	Relevant legislation
Appendix five:	Sustainability Measure Process timetables

APPENDIX ONE: ESTABLISHMENT PROCESS FOR TAIĀPURE

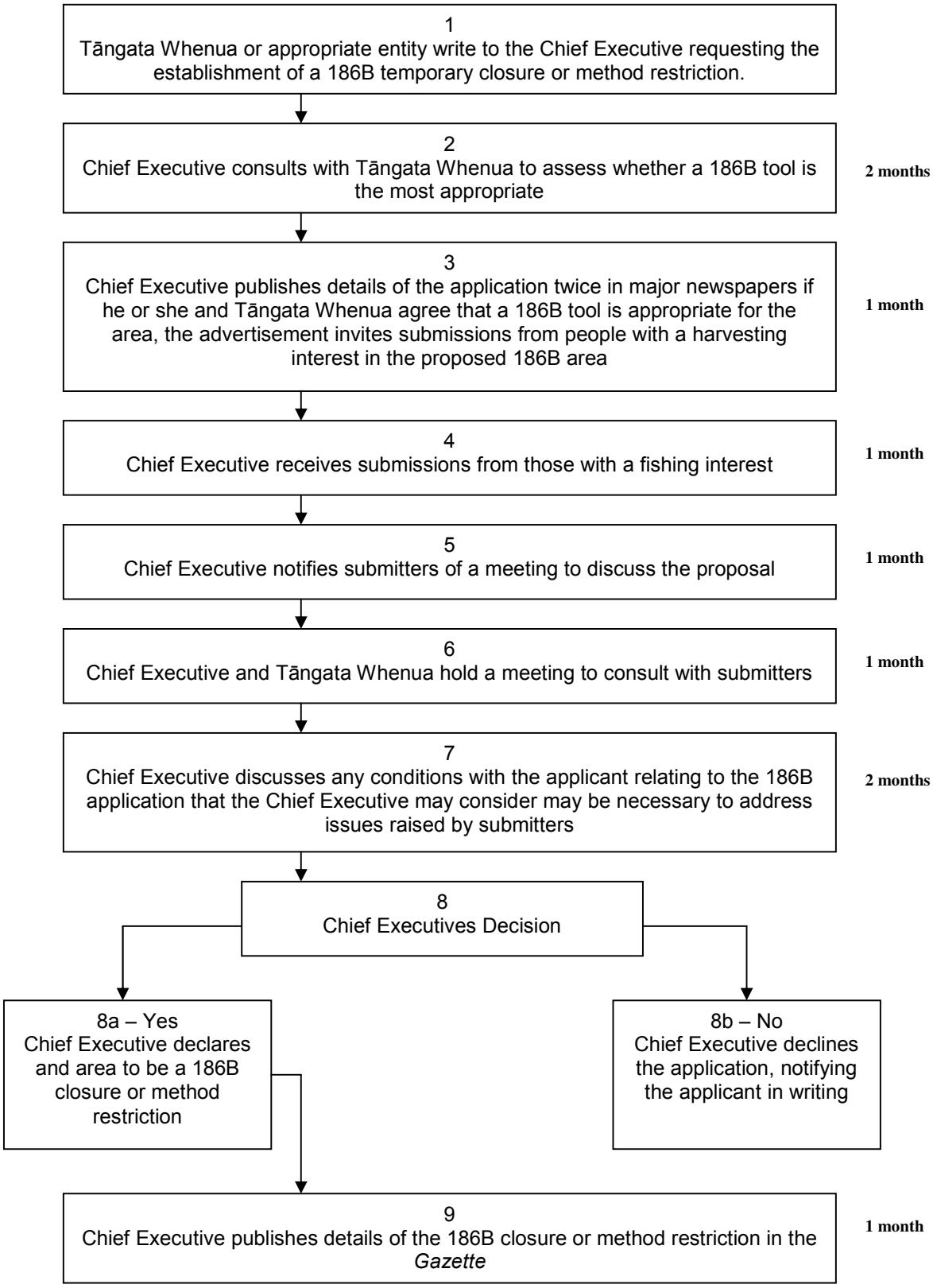



10
Minister publishes in the *Gazette* the:
• Tribunal Report
• Tribunal Recommendations
• Minister's Decision
1 month
11
A party involved in the Tribunal proceedings appeals to the High Court on a question of law, believing that the report or recommendations of the Tribunal are erroneous in point of law.
1 month
Yes
No
12
High Court hearing and decision
Time unknown
13a – Yes
Minister recommends the Governor-General declare a taiāpure by Order In Council
13
Minister's Final Decision on the taiāpure application
13b- No
Minister declines the application and informs the applicants in writing
Time unknown
14
Chief Executive publishes details of the taiāpure in the *Gazette*
1 month
15
Persons representative of the local Māori community nominate the management committee
Time unknown
16
After consultation with the Minister of Māori Affairs the Minister of Fisheries appoints the management committee
Time unknown
17
Management committee provides advice and recommendations to the Minister for the formulation of regulations to manage the taiāpure
Time unknown
18
Minister's decision
18a – Yes
Minister accepts the recommendations
18b – No
Minister refers the recommendations back to the committee for further development
Time unknown
19
Minister publishes the taiāpure regulations in the *Gazette*
1 month

APPENDIX TWO: ESTABLISHMENT PROCESS FOR MĀTAITAI



APPENDIX THREE: ESTABLISHMENT PROCESS FOR TEMPORARY CLOSURES OR METHOD RESTRICTIONS



APPENDIX FOUR: RELEVANT LEGISLATION

FISHERIES (SOUTH ISLAND CUSTOMARY FISHING) REGULATIONS 1999
MĀTAITAI RESERVES

17 APPLICATION FOR MATAITAI RESERVE--

(1) The persons referred to in subclause (3) may from time to time apply to the Minister, in form 4, for a mataitai reserve in respect of any part of the area/rohe moana for which they are the tangata whenua or Tangata Tiaki/Kaitiaki.

(2) The application must include the name of the person or persons being nominated as the Tangata Tiaki/Kaitiaki for the mataitai reserve.

(3) The persons who may apply under subclause (1) are--

(a) The nominating tangata whenua under regulation 5:

(b) The nominating tangata whenua under regulation 8:

(c) The Tangata Tiaki/Kaitiaki whose appointment is confirmed under regulation 9.

18 NOTIFICATION OF APPLICATION--

(1) No later than 20 working days after receipt of any application under regulation 17, the Minister must cause notice of the application to be published at least twice, with an interval of not less than 5 working days between each publication, in a newspaper circulating in the locality of the proposed mataitai reserve.

(2) The notice must invite written submissions to be made by the local community, and allow a minimum of 20 working days for such submissions to be made.

19 CONSULTATION--

(1) As soon as practicable, and in any case no later than 20 working days after the closing date for receiving submissions under regulation 18, the Minister must cause notice of a meeting to be published at least twice, with an interval of not less than 5 working days between each publication, in a newspaper circulating in the locality of the proposed mataitai reserve.

(2) The Minister and the tangata whenua applying for the proposed mataitai reserve must together consult with the local community at the meeting.

(3) After consultation with the local community, the tangata whenua may amend an application made under regulation 17 and must advise the Minister of any amendments to the application.

(4) As soon as practicable after consultation with the local community under subclause (2) or on being advised of an amended application under subclause (3) (as the case may be), the Minister must give a notice in accordance with subclause (5).

(5) The notice referred to in subclause (4) must be published in a newspaper circulating in the locality of the proposed mataitai reserve, and--

(a) Set out details of the application for a mataitai reserve; and

(b) Invite written submissions about the fish stocks in the area specified in the application from persons who take fish, aquatic life, or seaweed or own quota, and whose ability to take such fish, aquatic life, or seaweed or whose ownership interest in quota may be affected by the proposed mataitai reserve; and

(c) Allow a minimum of 20 working days for such submissions to be made.

(6) As soon as practicable after submissions have been made in accordance with subclause (5), the Minister must--

(a) Advise the tangata whenua or the applicant under regulation 17 of the submissions; and

(b) Discuss with the tangata whenua any conditions relating to the mataitai reserve that the Minister considers may be necessary to address issues raised by those submissions.

20 DECLARATION OF MATAITAI RESERVE--

(1) Subject to regulation 19, the Minister must, by notice in the Gazette, declare an area to be a mataitai reserve if satisfied that--

(a) There is a special relationship between the tangata whenua making the application and the proposed mataitai reserve; and

(b) The general aims of management specified in the application under regulation 17 are consistent with the sustainable management of the fishery to which the application relates; and

(c) The proposed mataitai reserve is an identified traditional fishing ground and is of a size appropriate to effective management by the tangata whenua; and

(d) The Minister and the tangata whenua are able to agree on suitable conditions for the proposed mataitai reserve; and

(e) The proposed mataitai reserve will not--

(i) Unreasonably affect the ability of the local community to take fish, aquatic life, or seaweed for non-commercial purposes; or

(ii) Prevent persons with a commercial interest in a species taking their quota entitlement or annual catch entitlement (where applicable) within the quota management area for that species; or

(iii) Prevent persons with a commercial fishing permit for a non-quota management species taking fish, aquatic life, or seaweed under their permit within the area for which that permit has been issued; and

(f) The proposed mataitai reserve is not a marine reserve under the Marine Reserves Act 1971.

(2) If the Minister considers that an application for a mataitai reserve under regulation 17 does not meet 1 or more of the criteria set out in subclause (1), the Minister must decline that application as soon as reasonably practicable and, in any case no later than 30 working days after the date of the Minister's decision to decline the application, the Minister must notify the applicant in writing of that fact and state the reasons for declining.

(3) Non-compliance with any time period specified in regulation 18 or regulation 19 does not prevent the Minister declaring a mataitai reserve in accordance with this regulation.

(4) If the Minister declares a mataitai reserve under subclause (1), the Minister must cause an appropriate notice to be published in the Gazette as soon as practicable.

21 APPOINTMENT OF TANGATA TIAKI/KAITIAKI FOR MATAITAI RESERVE--

(1) The Minister must appoint the Tangata Tiaki/Kaitiaki nominated on the approved form under regulation 17 for the corresponding mataitai reserve declared under regulation 20.

(2) A Tangata Tiaki/Kaitiaki may be appointed under subclause (1) for up to 5 years.

(3) At any time during the illness or absence of any Tangata Tiaki/Kaitiaki or for any other temporary purpose, the Tangata Tiaki/Kaitiaki may, with the approval of, and for such period of time as may be agreed to by the tangata whenua who nominated the Tangata Tiaki/Kaitiaki under regulation 17(2), and on prior notification to the chief executive, delegate his or her powers under these regulations to any member of the tangata whenua of the customary food gathering area/rohe moana concerned.

22 NOTIFICATION OF MATAITAI RESERVE AND TANGATA TIAKI/KAITIAKI--

(1) As soon as practicable, and in any case no later than 20 working days, after the appointment of a Tangata Tiaki/Kaitiaki for a mataitai reserve under regulation 21, the chief executive must cause to be published in a newspaper circulating in the locality of the mataitai reserve, and in the Gazette, a notice--

(a) Stating that the mataitai reserve has been declared under regulation 20; and

(b) Describing the boundaries of the reserve; and

(c) Naming the Tangata Tiaki/Kaitiaki.

(2) The declaration of a mataitai reserve under regulation 20 and appointment of Tangata Tiaki/Kaitiaki under regulation 21 takes effect on a date to be specified in the Gazette notice under this regulation.

(3) If, on or before the end of a person's appointment as a Tangata Tiaki/Kaitiaki, the relevant tangata whenua under regulation 5 or regulation 8 advise the Minister that they wish to nominate that person for a further appointment, the Minister must appoint that person for a further period of up to 5 years.
(4) Unless subclause (3) applies, at the end of a person's appointment as a Tangata Tiaki/Kaitiaki, the Minister must seek new nominations from the relevant tangata whenua under regulation 5 or regulation 8.

23 CANCELLATION OF APPOINTMENT--

(1) Subject to this regulation, the Minister must cancel the appointment of a Tangata Tiaki/Kaitiaki in respect of a mataitai reserve on receipt of a request in writing from--
(a) The tangata whenua who nominated the Tangata Tiaki/Kaitiaki under regulation 17; or
(b) The Tangata Tiaki/Kaitiaki of the mataitai concerned.
(2) If the appointment of a Tangata Tiaki/Kaitiaki is cancelled under subclause (1) or upon the death of a Tangata Tiaki/Kaitiaki, the Minister must appoint another Tangata Tiaki/Kaitiaki nominated by the tangata whenua who made the original proposal for a Tangata Tiaki/Kaitiaki.
(3) The Minister must cause to be published in a newspaper circulating in the locality of the area/rohe moana concerned, and in the Gazette, a notice of--
(a) The cancellation of the appointment of a Tangata Tiaki/Kaitiaki; and
(b) The appointment of a new Tangata Tiaki/Kaitiaki.
(4) The cancellation or appointment takes effect on a date to be specified in the Gazette notice under subclause (3).

POWERS OF TANGATA TIAKI/KAITIAKI IN MATAITAI RESERVE

24 FISHING IN MATAITAI RESERVE--

(1) Subject to this regulation and to regulations 25 to 29, regulation 11 and the Fisheries (Amateur Fishing) Regulations 1986 apply to fishing in a mataitai reserve.
(2) No person may engage in commercial fishing in a mataitai reserve.
(3) Despite subclause (2), the Tangata Tiaki/Kaitiaki of the mataitai reserve may request the Minister to recommend the making of regulations to allow the commercial taking of specified species of fish, aquatic life, or seaweed, by quantity or time period, within that mataitai reserve.
(4) On receipt of a request from the Tangata Tiaki/Kaitiaki made under subclause (3), the Minister may recommend to the Governor-General the making of regulations under Part XVI of the Fisheries Act 1996 to provide for commercial fishing in that mataitai reserve for such species of fish, aquatic life, or seaweed in such quantities and for such time as may be requested under subclause (3).
(5) If regulations of the kind referred to in subclause (3) are made, such commercial fishing must be conducted in accordance with the provisions of the Fisheries Act 1996 and the relevant commercial fishing regulations applying under that Act.

25 POWER TO RESTRICT OR PROHIBIT FISHING IN MATAITAI RESERVE--

(1) The Tangata Tiaki/Kaitiaki of a mataitai reserve may make bylaws restricting or prohibiting the taking of fish, aquatic life, or seaweed from within the whole or any part of the mataitai reserve for any purpose that the Tangata Tiaki/Kaitiaki considers necessary for the sustainable management of the fish, aquatic life, and seaweed in that mataitai reserve.
(2) Bylaws made under this regulation may impose restrictions or prohibitions relating to all or any of the following matters:
(a) The species of fish, aquatic life, and seaweed that may be taken:
(b) The quantity of each species that may be taken:
(c) Size limits relating to each species to be taken:
(d) The method by which each species may be taken:
(e) The area or areas in which each species may be taken:

(f) Any other matters the Tangata Tiaki/Kaitiaki considers necessary for the sustainable management of fisheries resources, including (without limitation) customary food gathering purposes, in the mataitai reserve.

(3) Bylaws made under this regulation apply generally to all persons fishing in the mataitai reserve.

(4) Bylaws made under this regulation--

(a) Must be deposited with the office of the Ministry nearest the mataitai reserve and also at a place near the mataitai reserve that is designated by the chief executive for the purpose; and

(b) Must be open to inspection by, and for the purposes of receiving submissions from, the public 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.

(5) The chief executive must notify in a newspaper circulating in the locality of the mataitai reserve the fact that a bylaw has been deposited under subclause (4) and the place where that bylaw may be inspected.

(6) A Tangata Tiaki/Kaitiaki may amend any bylaw deposited with the Ministry under subclause (4), in light of any submission received, and need not deposit the amended bylaw with the Ministry before notifying the Minister of that restriction or prohibition under regulation 26.

26 NOTIFICATION OF RESTRICTION OR PROHIBITION--

(1) On the making of a bylaw under regulation 25 restricting or prohibiting the taking of fish, aquatic life, or seaweed within a mataitai reserve,--

(a) The Tangata Tiaki/Kaitiaki must notify the Minister of the bylaw; and

(b) The notification must be accompanied by a copy of the bylaw and a statement of the reasons why the Tangata Tiaki/Kaitiaki considers the proposed restriction or prohibition necessary or desirable for the sustainable management of the fish, aquatic life, or seaweed in that mataitai reserve.

(2) On receipt of any notice under subclause (1), the Minister must decide, as soon as practicable and in any case no later than 40 working days after the making of the bylaw, whether to approve the bylaw.

(3) Non-compliance with any time period specified in regulation 25 or in this regulation does not prevent the Minister approving a bylaw in accordance with this regulation.

(4) On approving the imposition of a bylaw in a mataitai reserve under subclause (2), the Minister must, as soon as practicable after approving such a bylaw, publish the approved bylaw in the Gazette.

(5) On rejecting the imposition of a bylaw in a mataitai reserve under subclause (2), the Minister must notify the Tangata Tiaki/Kaitiaki of his or her decision.

(6) Any bylaw approved under this regulation takes effect on a date to be specified in the approved bylaw published in the Gazette.

27 POWER TO AUTHORISE FISHING FOR FUNCTIONS OF MARAE--

Subject to regulation 11, the Tangata Tiaki/Kaitiaki for a mataitai reserve may authorise the taking of fish, aquatic life, or seaweed to continue for purposes which sustain the functions of a marae, despite any bylaws applying under this Part.

28 FISHING FROM REGISTERED COMMERCIAL VESSELS FOR CUSTOMARY FOOD GATHERING PURPOSES--

No person may fish from any New Zealand fishing vessel in a mataitai reserve for the purpose of sustaining the functions of a marae unless expressly authorised to do so by a Tangata Tiaki/Kaitiaki under regulation 27.

29 ENHANCEMENT OF FISH STOCKS--

Subject to regulation 11 and despite any bylaw applying under these regulations, any Tangata Tiaki/Kaitiaki for a mataitai reserve may authorise any person to take fish, aquatic life, or seaweed from any area within that mataitai reserve and to release those

fish, aquatic life, or seaweed within another part of that mataitai reserve, for the purpose of enhancing the stock or stocks.

NGĀI TAHU CLAIMS SETTLEMENT ACT 1998 - PART 12
MAHINGA KAI – CUSTOMARY FISHERIES

310 Temporary closure of fishing area or restriction on fishing methods

Section 186A(1) of the Fisheries Act 1996 is amended by inserting in paragraphs (a) and (b), after the words "New Zealand fisheries waters", the words "(other than South Island fisheries waters as defined in section 186B(9))".

311 Temporary closure of fisheries

The Fisheries Act 1996 is amended by inserting, after section 186A, the following section:
186B.
(1) The chief executive may from time to time, by notice in the Gazette,—
(a) Temporarily close any area of South Island fisheries waters in respect of any species of fish, aquatic life, or seaweed; or
(b) Temporarily restrict or prohibit the use of any fishing method in respect of any area of South Island fisheries waters and any species of fish, aquatic life, or seaweed.
(2) The chief executive may impose such a closure, restriction, or prohibition only if the chief executive considers that—
(a) It is likely to assist in replenishing the stock of the species of fish, aquatic life, or seaweed in the area concerned; or
(b) It is likely to assist in recognising and making provision for the use and management practices of tangata whenua in the exercise of non-commercial fishing rights.
(3) A notice given under subsection (1) must be publicly notified.
(4) A notice given under subsection (1)—
(a) May not be in force beyond 2 years after the date of its notification in the Gazette:
(b) Subject to paragraph (a), may be expressed to be in force for any particular year or period, or for any particular date or dates, or for any particular month or months of the year, week or weeks of the month, or day or days of the week.
(5) Nothing in subsection (4)(a) prevents a further notice being given under subsection (1) in respect of any stock and area before or on or about the expiry of an existing notice that relates to that stock and area.
(6) Before giving a notice under subsection (1), the chief executive must—
(a) Consult such persons as the chief executive considers are representative of persons having an interest in the stock concerned or in the effects of fishing in the area concerned, including tangata whenua, environmental, commercial, recreational, and local community interests; and
(b) Provide for the participation in the decision-making process of tangata whenua with a non-commercial interest in the stock or the effects of fishing in the area concerned, having regard to kaitiakitanga.
(7) Every person commits an offence who, in contravention of a notice given under subsection (1),—
(a) Takes any fish, aquatic life, or seaweed from a closed area; or
(b) Takes any fish, aquatic life, or seaweed using a prohibited fishing method.
(8) A person who commits an offence against subsection (7) is liable,—
(a) In the case of a commercial fisher, to the penalty specified in section 252(5):
(b) In any other case, to the penalty specified in section 252(6).
(9) In this section, the term 'South Island fisheries waters' has the same meaning as in the Ngai Tahu Claims Settlement Act 1998.

FISHERIES ACT 1996 - PART IX
TAIĀPURE-LOCAL FISHERY AND CUSTOMARY FISHING

174 Object

The object of sections 175 to 185 of this Act is to make, in relation to areas of New Zealand fisheries waters (being estuarine or littoral coastal waters) that have customarily been of special significance to any iwi or hapu either—

(a) As a source of food; or

(b) For spiritual or cultural reasons,—

better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi.

175 Declaration of taiāpure-local fisheries

Subject to section 176 of this Act, the Governor-General may from time to time, by Order in Council, declare any area of New Zealand fisheries waters (which waters are estuarine waters or littoral coastal waters) to be a taiapure-local fishery.

176 Provisions relating to order under section 175

(1) An order under section 175 of this Act may be made only on a recommendation made by the Minister in accordance with sections 177 to 185 of this Act.

(2) The Minister shall not recommend the making of an order under section 175 of this Act unless the Minister is satisfied both—

(a) That the order will further the object set out in section 174 of this Act; and

(b) That the making of the order is appropriate having regard to—

(i) The size of the area of New Zealand fisheries waters that would be declared by the order to be a taiapure-local fishery; and

(ii) The impact of the order on the general welfare of the community in the vicinity of the area that would be declared by the order to be a taiapure-local fishery; and

(iii) The impact of the order on those persons having a special interest in the area that would be declared by the order to be a taiapure-local fishery; and

(iv) The impact of the order on fisheries management.

177 Proposal for establishment of taiapure-local fishery

(1) Any person may submit to the chief executive a proposal for the establishment of a taiapure-local fishery.

(2) The proposal shall—

(a) Contain a description of the proposed taiapure-local fishery, which description shall include particulars of the location, area, and boundaries of the proposed taiapure-local fishery; and

(b) Describe—

(i) Maori, traditional, recreational, commercial, and other interests in the proposed taiapure-local fishery; and

(ii) The species of fish, aquatic life, or seaweed in the proposed taiapure-local fishery that are of particular importance or interest.

(3) The proposal shall—

(a) State why the area to which the proposal relates has customarily been of special significance to an iwi or hapu either—

(i) As a source of food; or

(ii) For spiritual or cultural reasons:

(b) Set out the policies and objectives of the proposal:

(c) Contain such other particulars as the chief executive considers appropriate.

178 Initial consideration of proposal

(1) The chief executive shall refer to the Minister every proposal submitted to the chief executive in accordance with section 177 of this Act.

(2) If the Minister, after consultation with the Minister of Maori Affairs and after having regard to the provisions of section 176(2) of this Act, agrees in principle with the proposal, the Minister shall authorise the chief executive to publish notice of the proposal in the Gazette.
(3) The proposal shall be available for public inspection for a period of not less than 2 months after the date of the publication in the Gazette of the notice of the proposal.
(4) The notice shall specify the office of the Maori Land Court in which objections to the proposal may be lodged.
(5) If the Minister, after consultation with the Minister of Maori Affairs and after having regard to the provisions of section 176(2) of this Act, does not agree in principle with the proposal, the chief executive shall inform the person who made the proposal that the proposal will not be proceeding further as the Minister does not agree with it in principle.

179 Notice of proposal

(1) The notice authorised under section 178(2) of this Act shall be published at least twice, with an interval of not less than 7 days between each notification of the proposal, in the metropolitan newspapers and in a newspaper circulating in the locality of the area to which the proposal relates.
(2) A copy of the proposal shall be deposited in—
(a) The office of the Maori Land Court nearest to the locality of the area to which the proposal relates; and
(b) The Ministry's head office; and
(c) The office of the territorial authority for the area to which the proposal relates; and
(d) The office of the regional council for the area to which the proposal relates.

180 Objections to, and submissions on, proposal

(1) Any person or any public authority, local authority, or body specifically constituted by or under any Act, and any Minister of the Crown, which or who has any function, power, or duty which relates to, or which or who is or could be affected by, any aspect of the proposed taiapure-local fishery may, within 2 months of the publication in the Gazette of the proposal, lodge at the office of the Maori Land Court specified under section 178(4) of this Act—
(a) An objection to the proposal; or
(b) Submissions in relation to the proposal; or
(c) Both.
(2) Any such objection and any such submissions shall—
(a) Identify the grounds on which the objections or submissions are made; and
(b) Be supplemented by such particulars and information as the Registrar of the Maori Land Court notifies the applicant the Registrar of the Maori Land Court considers necessary to sufficiently identify the grounds of the objection or the submissions.

181 Inquiry by tribunal

(1) A public inquiry shall be conducted into all objections and submissions received under section 180 of this Act.
(2) The inquiry shall be conducted by a tribunal consisting of a Judge of the Maori Land Court appointed by the Chief Judge of the Maori Land Court.
(3) The Chief Judge of the Maori Land Court may direct that the tribunal conducting the inquiry conduct it with the assistance of one or more assessors to be appointed by the Chief Judge for the purpose of the inquiry.
(4) In considering the suitability of any person for appointment as an assessor, the Chief Judge of the Maori Land Court shall have regard not only to that person's personal attributes but also to that person's knowledge of and experience in the different aspects of matters likely to be the subject-matter of the inquiry.

(5) The tribunal shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908 and, subject to the provisions of this Act, all the provisions of that Act, except sections 10 to 12, shall apply accordingly.

(6) The person who submitted the proposal to the chief executive, the Minister, any regional council or local authority whose region or district is affected by the proposal, and every body and person which or who made submissions on or objected to the proposal under section 180 of this Act, shall have the right to be present and be heard at every inquiry conducted by the tribunal under this section, and may be represented by counsel or other duly authorised representative.

(7) A tribunal appointed under this section may, if the Chief Judge of the Maori Land Court so directs, conduct any 2 or more inquiries together notwithstanding that they relate to different areas or different parts of any area.

(8) On completion of the inquiry, the tribunal shall, having regard to the provisions of section 176(2) of this Act,—

(a) Make a report and recommendations to the Minister on the objections and submissions made to it, which report and recommendations may include recommended amendments to the proposal; or

(b) Recommend to the Minister that no action be taken as a result of the objections and submissions made to it.

(9) The Minister, after taking into account the report and recommendations of the tribunal and after having regard to the provisions of section 176(2) of this Act, and after consultation with the Minister of Maori Affairs,—

(a) May—

(i) Accept those recommendations; or

(ii) Decline to accept all or any of those recommendations; and

(b) Shall publish in the Gazette—

(i) The report and recommendations of the tribunal; and

(ii) The decision of the Minister on the report and recommendations of the tribunal.

(10) Subject to section 182 of this Act, no appeal shall lie from any report or recommendation or decision made under this section.

182 Appeal on question of law

If any party to any proceedings under section 181 of this Act before a tribunal appointed under that section is dissatisfied with the report or any recommendation of the tribunal as being erroneous in point of law, that party may appeal to the High Court by way of case stated for the opinion of the Court on a question of law only, and the provisions of sections 299 and 308 of the Resource Management Act 1991 shall, with any necessary modifications, apply in respect of the report or recommendation in the same manner as they apply in respect of a decision of the [Environment Court] under that Act.

183 Power of Minister to recommend declaration of taiapure-local fishery

If a proposal for the establishment of a taiapure-local fishery has been made under section 177 of this Act and either any proceedings in relation to that proposal (including any proceedings taken under sections 180 to 182 of this Act in relation to that proposal) have been disposed of or the time for taking any such proceedings has expired, the Minister shall, if satisfied that a recommendation should be made under section 176(1) of this Act, make that recommendation accordingly.

184 Management of taiapure-local fishery

(1) The Minister, after consultation with the Minister of Maori Affairs, shall appoint a committee of management for each taiapure-local fishery.

(2) The committee of management may be any existing body corporate.

(3) The committee of management shall be appointed on the nomination of persons who appear to the Minister to be representative of the local Maori community.

(4) The committee of management shall hold office at the pleasure of the Minister.

185 Power to recommend making of regulations

(1) A committee of management appointed for a taiapure-local fishery may recommend to the Minister the making of regulations under section 186 or section 297 or section 298 of this Act for the conservation and management of the fish, aquatic life, or seaweed in the taiapure-local fishery.

(2) Regulations made under any section referred to in subsection (1) of this section (other than section 186 of this Act), and made pursuant to a recommendation under that subsection, may override the provisions of any other regulations made under section 297 or section 298 of this Act.

(3) Except to the extent that any regulations made under any section referred to in subsection (1) of this section, and made pursuant to a recommendation under that subsection, override or are otherwise inconsistent with the provisions of any other regulations made under that section, those provisions shall apply in relation to every taiapure-local fishery.

(4) Any provision of regulations made under any section referred to in subsection (1) of this section, and made pursuant to a recommendation under that subsection, that relates only to a taiapure-local fishery may be made only in accordance with subsection (1) of this section.

(5) No regulations made under any section referred to in subsection (1) of this section, and made pursuant to a recommendation under that subsection, shall provide for any person—

(a) To be refused access to, or the use of, any taiapure-local fishery; or

(b) To be required to leave or cease to use any taiapure-local fishery,—

because of the colour, race, or ethnic or national origins of that person or of any relative or associate of that person.

APPENDIX FIVE:
PROCESS TO REVIEW SUSTAINABILITY MEASURES AND OTHER MANAGEMENT CONTROLS (1 October Cycle)

April/May	Fisheries Assessment Plenary
↓	
Early June	MFish Initial Position Paper released
↓	
June	MFish meetings with tāngata whenua
↓	
Mid July	Final submissions from tāngata whenua due with MFish
↓	
August	MFish Final Advice Paper released and submission on it due with MFish
↓	
Late August	Minister makes final decisions on TACs/TACCs
↓	
Early September	TAC and TACC changes Gazetted. Final decision letter sent to stakeholders

APPENDIX FIVE (continued):
PROCESS TO REVIEW SUSTAINABILITY MEASURES AND OTHER MANAGEMENT CONTROLS (1 April Cycle – Eg. Rock Lobster)

November	Fisheries Assessment Plenary
↓	
December	MFish Initial Position Paper released.
↓	
January	MFish meetings with tāngata whenua
↓	
Late January	Final submissions from tāngata whenua due with MFish
↓	
Early February	MFish Final Advice Paper released and submissions on it due to MFish
↓	
Late February	Minister makes final decisions on TACs/TACCs
↓	
Early March	TAC and TACC changes Gazetted. Final decision letter sent to stakeholders