



Waikato-Tainui (Waikato River Fisheries) Regulations 2011

Anand Satyanand, Governor-General

Order in Council

At Wellington this 22nd day of August 2011

Present:

His Excellency the Governor-General in Council

Pursuant to section 186 of the Fisheries Act 1996 and section 93 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Regulations

- 1 Title**
These regulations are the Waikato-Tainui (Waikato River Fisheries) Regulations 2011.

2 Commencement

- (1) These regulations come into force on the 28th day after the date of their notification in the *Gazette*.
- (2) The powers in regulation 10 may be exercised only after the actions described in section 39(2)(a) to (c) of the Act have been taken for the first time.

3 Background

- (1) On 17 December 2009, the Crown and Waikato-Tainui entered into a deed of settlement relating to the Waikato River.
- (2) The overarching purpose of the 2009 deed is to restore and protect the health and wellbeing of the Waikato River for future generations.
- (3) The agreements in the 2009 deed are intended, among other things, to—
 - (a) enhance the relationship between the Crown and Waikato-Tainui; and
 - (b) recognise and sustain the special relationship that Waikato-Tainui have with the Waikato River; and
 - (c) enter a new era of co-management over the Waikato River across a number of levels and a range of agencies; and
 - (d) reflect a unity of commitment to respect and care for the Waikato River.
- (4) These commitments provide for the participation of Waikato-Tainui in the co-management of the Waikato River and reflect the dual principles of te mana o te awa and mana whakahaere.
- (5) The exercise of mana whakahaere by Waikato-Tainui is reflected in the 2009 deed through a number of mechanisms, including provision for the development of Waikato-Tainui fisheries regulations.
- (6) The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 gives effect to the 2009 deed and includes the power to develop these regulations.

4 Relationship between these regulations and other regulations

- (1) A whakaaetanga holder may undertake customary food gathering in the Waikato-Tainui fisheries area without regard to any other regulations under the Fisheries Act 1996.
- (2) A person who is not a whakaaetanga holder may undertake customary food gathering in the Waikato-Tainui fisheries area only to the extent permitted by regulations under the Fisheries Act 1996.
- (3) A mataitai reserve as provided for in the Fisheries (Kaimoana Customary Fishing) Regulations 1998 must not be established in the Waikato-Tainui fisheries area.
- (4) These regulations prevail over any other regulations made under the Fisheries Act 1996 if these regulations and the other regulations would both apply and there is an inconsistency between them.

Terms used in regulations

5 General interpretation

In these regulations, unless the context requires another meaning,—

Act means the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010

application means an application under regulation 12

customary food gathering has the meaning given to it in regulation 6

kaitiaki has the meaning given to it in regulation 10(1)

paataka has the meaning given to it in regulation 9(1)

paa tuna has the meaning given to it in regulation 9(2)

undue adverse effect on fishing means an undue adverse effect on customary fishing, commercial fishing, or recreational fishing

Waikato-Tainui environmental plan means the plan prepared by the Trust under section 39(2) of the Act to the extent to which its contents relate to the functions and powers in sections 12 to 14 of the Fisheries Act 1996

Waikato-Tainui fisheries area means—

- (a) the body of water known as the Waikato River flowing continuously or intermittently from Karapiro to the mouth of the Waikato River shown as located within the area marked “A” on SO plan 409144; and
- (b) all tributaries, streams, and watercourses flowing into the part of the Waikato River described in paragraph (a), to the extent to which they are within the area marked “A” on SO plan 409144; and
- (c) lakes and wetlands within the area marked “A” on SO plan 409144; and
- (d) the beds and banks of the water bodies described in paragraphs (a) to (c)

whakaaetanga hari has the meaning given to it in regulation 7(3)

whakaaetanga holder has the meaning given to it in regulation 8

whakaaetanga kohikohia has the meaning given to it in regulation 7(1)

whakaaetanga noho has the meaning given to it in regulation 7(2).

6 Customary food gathering

Customary food gathering means the following activities to the extent to which they are consistent with the Act, section 186 of the Fisheries Act 1996, and the Waikato-Tainui environmental plan:

- (a) managing fisheries resources in fisheries managed under the Fisheries Act 1996 in the Waikato-Tainui fisheries area:
- (b) taking fisheries resources from fisheries managed under the Fisheries Act 1996 in the Waikato-Tainui fisheries area:
- (c) releasing fisheries resources taken from fisheries managed under the Fisheries Act 1996 in the Waikato-Tainui fisheries area into 1 or both of the following:
 - (i) the Waikato-Tainui fisheries area:
 - (ii) an area outside the Waikato-Tainui fisheries area:

- (d) using fisheries resources in fisheries managed under the Fisheries Act 1996 in the Waikato-Tainui fisheries area:
- (e) possessing fisheries resources taken from fisheries managed under the Fisheries Act 1996 in the Waikato-Tainui fisheries area:
- (f) depositing, in paataka or paa tuna, fisheries resources taken from fisheries managed under the Fisheries Act 1996 in the Waikato-Tainui fisheries area:
- (g) removing, from paataka or paa tuna, fisheries resources taken from fisheries managed under the Fisheries Act 1996 in the Waikato-Tainui fisheries area:
- (h) keeping, in paataka or paa tuna, fisheries resources taken from fisheries managed under the Fisheries Act 1996 in the Waikato-Tainui fisheries area.

7 Whakaaetanga kohikohia, whakaaetanga noho, and whakaaetanga hari

- (1) **Whakaaetanga kohikohia** means a whakaaetanga to undertake any or all of the activities described in regulation 6(a) to (e) for 1 or more of the purposes described in subclause (4).
- (2) **Whakaaetanga noho** means a whakaaetanga to undertake the activity described in regulation 6(f) for 1 or more of the purposes described in subclause (4).
- (3) **Whakaaetanga hari** means a whakaaetanga to undertake the activities described in regulation 6(e) and (g) for 1 or more of the purposes described in subclause (4).
- (4) The purposes are—
 - (a) a customary purpose, which means—
 - (i) providing food at hui or tangihanga; or
 - (ii) sustaining the functions of a marae; or
 - (iii) any other customary purpose:
 - (b) educational research:
 - (c) environmental research:
 - (d) enhancing species:
 - (e) restoring species.
- (5) The activity described in regulation 6(h) does not require a whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari.

8 Whakaaetanga holder

Whakaaetanga holder means a person—

- (a) to whom a whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari has been issued; and
- (b) whose whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari has not ended.

9 Paataka and paa tuna

- (1) **Paataka** means a place to which both the following apply:
 - (a) it is where fisheries resources taken and possessed under a whakaaetanga kohikohia and deposited under a whakaaetanga noho are kept for future use; and
 - (b) its designation as a paataka is published.
- (2) **Paa tuna** means a place to which both the following apply:
 - (a) it is where eels taken and possessed under a whakaaetanga kohikohia and deposited under a whakaaetanga noho are kept alive for future use; and
 - (b) its designation as a paa tuna is published.
- (3) The chief executive and the Trust may make an agreement with the owner or tenant of a place—
 - (a) providing for the place to be designated as a paataka or a paa tuna; and
 - (b) specifying the conditions, if any, under which the fisheries resources must be kept at the place.
- (4) The Trust must ensure that fisheries resources kept in a paataka or paa tuna are kept in accordance with any published conditions.
- (5) Designations and conditions are published for the purposes of this regulation when the Trust publishes them in the *Gazette*.

10 Kaitiaki

- (1) **Kaitiaki** means a person appointed under this regulation.
Appointing
- (2) The Trust may appoint 1 or more persons to be kaitiaki for the Waikato-Tainui fisheries area.
- (3) The Trust may appoint a person to be a kaitiaki only if he or she—
 - (a) is not a member of the Trust; and

- (b) is a registered member of Waikato-Tainui; and
 - (c) is 18 years or over; and
 - (d) is, in the Trust's opinion, knowledgeable in the customary food gathering practices of Waikato-Tainui in the Waikato-Tainui fisheries area; and
 - (e) meets any other criteria for appointment published by the Trust on its website.
- (4) When the Trust decides to appoint a person as a kaitiaki, it must also decide—
- (a) whether the person is to be a kaitiaki for the whole or a part of the Waikato-Tainui fisheries area and, if a part, which part; and
 - (b) when the appointment is to start and end.
- (5) When the Trust appoints a kaitiaki, it must—
- (a) give the Minister of Fisheries and Aquaculture a notice setting out—
 - (i) the kaitiaki's name and contact details; and
 - (ii) its decisions under subclause (4); and
 - (b) publish the notice.

Extending powers

- (6) After the Trust appoints a kaitiaki,—
- (a) it may decide that the kaitiaki may determine—
 - (i) applications for whakaaetanga kohikohia for 1 or more of the purposes in regulation 7(4)(a)(ii) and (iii) and (b) to (e):
 - (ii) applications for whakaaetanga noho for 1 or more of the purposes in regulation 7(4):
 - (iii) applications for whakaaetanga hari for 1 or more of the purposes in regulation 7(4):
 - (b) it may decide that the kaitiaki may issue whakaaetanga kohikohia orally under regulation 15:
 - (c) it must, if it makes a decision under paragraph (a) or (b),—
 - (i) give the Minister of Fisheries and Aquaculture a notice setting out its decision; and
 - (ii) publish the notice.

Cancelling

- (7) The Trust—

- (a) must cancel the appointment of a kaitiaki who resigns the office or dies in office:
 - (b) may cancel the appointment of a kaitiaki for any other reasonable cause.
- (8) When the Trust cancels the appointment of a kaitiaki, it must—
- (a) give the Minister of Fisheries and Aquaculture a notice setting out—
 - (i) the kaitiaki's name and contact details; and
 - (ii) the date on which the cancellation takes effect; and
 - (b) publish the notice.

Reappointing

- (9) The Trust—
- (a) may reappoint a person who resigns the office:
 - (b) must not reappoint a person whose appointment is cancelled under subclause (7)(b):
 - (c) must apply subclauses (3) to (5) when reappointing.

Notifying and publishing

- (10) The Trust must give notices to the Minister of Fisheries and Aquaculture under this regulation—
- (a) in writing or electronically; and
 - (b) as soon as practicable.
- (11) The Trust must publish notices under this regulation—
- (a) on the Waikato-Tainui website; and
 - (b) according to the following:
 - (i) for a notice under subclause (5)(b), within 40 working days after complying with subclause (5)(a):
 - (ii) for a notice under subclause (6)(c)(ii), as soon as practicable after complying with subclause (6)(c)(i):
 - (iii) for a notice under subclause (8)(b), as soon as practicable after complying with subclause (8)(a).

Financial matters

- (12) The following provisions apply:
- (a) a kaitiaki must not accept a payment, or a return of any other kind, for determining or granting an application

for, or for issuing, a whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari:

- (b) a kaitiaki may accept an honorarium from the Trust.

Applying

11 Powers of Trust and kaitiaki

- (1) The Trust has power to determine an application for a whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari for any of the purposes in regulation 7(4).
- (2) The power of a kaitiaki is as follows:
- (a) when the kaitiaki is appointed, he or she may determine an application only for a whakaaetanga kohikohia and only for the purpose in regulation 7(4)(a)(i):
- (b) if the Trust makes a decision under regulation 10(6)(a), the kaitiaki may determine applications as decided on by the Trust.
- (3) The maximum periods for which the Trust or a kaitiaki may grant applications are as follows:
- (a) for an application granted for a whakaaetanga kohikohia for the purpose in regulation 7(4)(a), 5 days, starting on the date on which the whakaaetanga kohikohia starts:
- (b) for an application granted for a whakaaetanga kohikohia for a purpose in any of regulation 7(4)(b) to (e), 365 days, starting on the date on which the whakaaetanga kohikohia starts:
- (c) for an application granted for a whakaaetanga noho, 5 days, starting on the date on which the whakaaetanga noho starts:
- (d) for an application granted for a whakaaetanga hari, 5 days, starting on the date on which the whakaaetanga hari starts.

12 Making

- (1) Any person may make an application.
- (2) An application may be made in writing, electronically, or orally.
- (3) An application—
- (a) must be for—

- (i) 1 whakaaetanga kohikohia; or
 - (ii) 1 whakaaetanga hari; or
 - (iii) 1 whakaaetanga noho; and
 - (b) must not be for a combination of the whakaaetanga listed in paragraph (a).
- (4) The applicant must state—
- (a) the applicant's name and contact details; and
 - (b) each activity in regulation 6(a) to (g) for which the application is made; and
 - (c) the names and contact details of other persons whom the applicant wants authorised to participate with the applicant in the activity; and
 - (d) each purpose in regulation 7(4) for which the application is made; and
 - (e) for an application for an activity in any of regulation 6(b) to (g), the quantity and species of fisheries resources that the activity will involve.
- (5) The applicant must make the application to—
- (a) the Trust; or
 - (b) a kaitiaki who the applicant believes has the power to determine the application.
- (6) The applicant must make the application at least 24 hours before the time when the applicant requires the whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari.
- (7) However, the applicant may make the application less than 24 hours before the time when the applicant requires the whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari if the short period is reasonably justified by the circumstances.

13 Handling

- (1) The Trust must determine applications received by it as soon as reasonably practicable.
- (2) When a kaitiaki receives an application, he or she must, as soon as reasonably practicable,—
 - (a) decide whether he or she has the power to determine it; and
 - (b) either—

- (i) notify the applicant that he or she does not have power to determine the application; or
- (ii) determine the application.

14 Determining

Decisions to be made on all applications

- (1) The decisions to be made to determine all applications are as follows:
 - (a) which purpose or purposes in regulation 7(4) the application is to be granted for; and
 - (b) what the geographical extent of the grant is to be, according to the following:
 - (i) the Trust may grant the application for the whole of the Waikato-Tainui fisheries area or a part of it that the Trust specifies;
 - (ii) a kaitiaki who is a kaitiaki for the whole of the Waikato-Tainui fisheries area may grant the application for the whole of the Waikato-Tainui fisheries area or a part of it that he or she specifies;
 - (iii) a kaitiaki who is a kaitiaki for part of the Waikato-Tainui fisheries area may grant the application for the whole of the part or a part of it that he or she specifies; and
 - (c) which species of fisheries resources are to be covered by the grant; and
 - (d) what quantities of fisheries resources are to be covered by the grant; and
 - (e) whether the quantities of fisheries resources are to be measured by weight or number; and
 - (f) whether other persons are to be authorised to participate with the applicant in the customary food gathering activity and, if so, which persons; and
 - (g) when the whakaaetanga is to start and end.

Decisions to be made on application for whakaaetanga kohikohia

- (2) The following additional decisions are to be made on an application for a whakaaetanga kohikohia:

- (a) which customary food gathering activities the application is to be granted for; and
- (b) what the size limits are to be on the species of fisheries resources to be managed, taken, released, used, or possessed; and
- (c) which methods are to be used to manage, take, release, use, or possess the fisheries resources; and
- (d) if the application is to be granted for the activity in regulation 6(d), in which places the fisheries resources may be used.

Decisions to be made on application for whakaaetanga noho

- (3) The following additional decisions are to be made on an application for a whakaaetanga noho:
 - (a) which paataka or paa tuna the fisheries resources are to be deposited in; and
 - (b) how the fisheries resources are to be transported.

Decisions to be made on application for whakaaetanga hari

- (4) The following additional decisions are to be made on an application for a whakaaetanga hari:
 - (a) which pataaka or paa tuna the whakaaetanga hari applies to; and
 - (b) how the fisheries resources are to be transported; and
 - (c) where the fisheries resources are to be transported to.

Final decision

- (5) Having made the decisions required by subclauses (1) to (4), the Trust or the kaitiaki may grant the application only if satisfied that granting it is consistent with, and promotes the purposes of, the Waikato-Tainui environmental plan.
- (6) The Trust or the kaitiaki may decide to grant the application subject to conditions in order to ensure that granting it is consistent with, and promotes the purposes of, the Waikato-Tainui environmental plan.
- (7) The conditions must be consistent with any directions given by the Trust that have been published on the Waikato-Tainui website.

15 Issuing

- (1) If the Trust or the kaitiaki grants the application, the Trust or the kaitiaki must issue the applicant with a whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari immediately.
- (2) The Trust—
 - (a) may issue the whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari in writing or electronically;
 - (b) may issue the whakaaetanga kohikohia orally.
- (3) The kaitiaki,—
 - (a) when appointed, may issue the whakaaetanga kohikohia in writing or electronically;
 - (b) if the Trust makes a decision under regulation 10(6)(a)(ii) or (iii), may issue the whakaaetanga noho or whakaaetanga hari in writing or electronically;
 - (c) if the Trust makes a decision under regulation 10(6)(b), may issue the whakaaetanga kohikohia orally.
- (4) To issue a whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari in writing or electronically, the Trust or the kaitiaki must—
 - (a) use the form prescribed under regulation 28; and
 - (b) provide the written or electronic copy to the applicant; and
 - (c) keep 2 copies of the written or electronic copy provided.
- (5) To issue a whakaaetanga kohikohia orally, the Trust or the kaitiaki must—
 - (a) record the decisions made under regulation 14; and
 - (b) tell the applicant the decisions; and
 - (c) note on the record that the applicant has been told the decisions; and
 - (d) provide a written or electronic copy of the decisions told to the applicant to the office of the Ministry that the Ministry nominates; and
 - (e) keep 2 copies of the written or electronic copy provided.

*Using***16 Whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari to be produced***Whakaaetanga holder*

- (1) A whakaaetanga holder must produce the whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari in the manner and at the time described in subclause (2) or (3).
- (2) If the whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari was issued in writing or electronically, the whakaaetanga holder must—
 - (a) have the whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari on his or her person whenever he or she is undertaking under it the customary food gathering activity or activities that it authorises; and
 - (b) produce the whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari to a fishery officer at the officer's request.
- (3) If the whakaaetanga kohikohia was issued orally, the whakaaetanga holder must advise a fishery officer at the officer's request of the decisions told to the holder under regulation 15(5)(b).

Trust or kaitiaki

- (4) A fishery officer may request the Trust to produce a copy of a whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari that it issued.
- (5) A fishery officer may request a kaitiaki to produce a copy of a whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari that he or she issued.
- (6) The Trust or the kaitiaki must produce the copy as soon as reasonably practicable and no more than 7 days after the request.

17 Whakaaetanga kohikohia resources to be kept separate

- (1) This regulation applies when a fisher—
 - (a) holds a whakaaetanga kohikohia; and
 - (b) either—
 - (i) holds a fishing permit; or
 - (ii) acts under the authority of a holder of a fishing permit; and

- (c) takes fisheries resources from fisheries managed under the Fisheries Act 1996 in the Waikato-Tainui fisheries area, whether or not while on a vessel.
- (2) The fisher must put all fisheries resources taken under the whakaaetanga kohikohia in containers clearly marked as containing only fisheries resources taken under the whakaaetanga kohikohia.
- (3) If the fisher does not comply with subclause (2), all the fisheries resources are to be treated as having been taken under the fishing permit.

Record-keeping

18 Agreement on record-keeping

- (1) The chief executive and the Trust must agree in writing or electronically on how records are to be kept under these regulations.
- (2) The Trust must ensure that the records are kept as provided in the agreement.

19 Records to be kept at paataka and paa tuna

- (1) The Trust must ensure that there is a record at each paataka or paa tuna of—
 - (a) the kinds and quantities of fisheries resources deposited, removed, and kept; and
 - (b) the date of each deposit or removal of fisheries resources; and
 - (c) the names and contact details of the whakaaetanga holder depositing or removing fisheries resources; and
 - (d) the unique identifier of the whakaaetanga holder's whakaaetanga noho or whakaaetanga hari.
- (2) The whakaaetanga holder must provide the information for the record at the time of the deposit or removal.
- (3) The records must be kept for at least 7 years.

20 Records to be kept by Trust and kaitiaki

- (1) The Trust and each kaitiaki must keep accurate and comprehensive records on—
 - (a) the applications each has declined; and

- (b) the whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari each has issued.
- (2) The records must be kept for at least 7 years.

Reporting

21 Reporting

Whakaaetanga holder to Trust or kaitiaki

- (1) Within 5 business days after the end of a whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari, the whakaaetanga holder must report to whichever of the Trust or the kaitiaki issued the whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari on whichever is relevant of the following:
 - (a) the kinds and quantities of fisheries resources managed, taken, released, used, or possessed under the whakaaetanga kohikohia;
 - (b) the kinds and quantities of fisheries resources deposited under the whakaaetanga noho;
 - (c) the kinds and quantities of fisheries resources possessed or removed under the whakaaetanga hari.

Kaitiaki to Trust

- (2) At the end of each quarter in each calendar year, each kaitiaki must provide to the Trust a copy of—
 - (a) each whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari that the kaitiaki issued during the quarter; and
 - (b) the information provided to the kaitiaki under subclause (1).

Trust to Ministry

- (3) Within 1 month after the end of each quarter in each calendar year, the Trust must provide to the Ministry a copy of—
 - (a) each whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari issued during the quarter; and
 - (b) the information provided to the Trust under subclauses (1) and (2).

Trust to Minister

- (4) As soon as practicable after 31 March and before 1 June in each year, the Trust must report to the Minister in writing or electronically on—
- (a) the Trust's actions in the preceding year in the Waikato-Tainui fisheries area; and
 - (b) whether the actions assisted in the achievement of the objectives of—
 - (i) the Waikato-Tainui environmental plan; and
 - (ii) any bylaws made under these regulations.

Trust to members of Waikato-Tainui

- (5) At the Trust's annual general meeting, or another meeting called for the purpose, the Trust must advise the members of Waikato-Tainui of matters relevant to the management of the Waikato-Tainui fisheries area in the preceding year, including, but not limited to,—
- (a) whether the Waikato-Tainui environmental plan is achieving its objectives; and
 - (b) whether any bylaws made under these regulations are achieving their objectives; and
 - (c) information on the quantity of fisheries resources taken under bylaws made under these regulations if that information is available.

*Bylaws***22 Trust may prepare proposed bylaws**

- (1) The Trust may prepare proposed bylaws to restrict or prohibit the taking of fisheries resources from fisheries managed under the Fisheries Act 1996 in the Waikato-Tainui fisheries area.
- (2) The restrictions or prohibitions may apply to the whole of the Waikato-Tainui fisheries area or a part of it specified in the bylaws.
- (3) The restrictions or prohibitions must be consistent with the Waikato-Tainui environmental plan.
- (4) The restrictions or prohibitions must also be necessary for 1 or both of the following:
 - (a) sustainable utilisation, giving “sustainable” the same meaning as it has in the definition of “ensuring sustain-

- ability” in section 8(2) of the Fisheries Act 1996 and giving “utilisation” the definition it has in section 8(2) of the Fisheries Act 1996:
- (b) cultural reasons, such as—
 - (i) traditional management practices; or
 - (ii) the occurrence of a human death in the Waikato-Tainui fisheries area; or
 - (iii) the special status of a species of fisheries resource in the Waikato-Tainui fisheries area; or
 - (iv) the need to increase the availability of a species of fisheries resource in a particular area in the Waikato-Tainui fisheries area.
 - (5) The restrictions or prohibitions may relate to any matter on which restrictions or prohibitions are considered necessary by the Trust for sustainable utilisation or cultural reasons, including—
 - (a) the species of fisheries resources that may be taken;
 - (b) the quantity of fisheries resources that may be taken;
 - (c) the size limits on the fisheries resources that may be taken;
 - (d) the method by which fisheries resources may be taken.

23 Procedure for making bylaws

Trust's role

- (1) If the Trust prepares proposed bylaws, it—
 - (a) must make the proposed bylaws available for the public to read at—
 - (i) the office of the Ministry nearest to the Waikato-Tainui fisheries area; and
 - (ii) any other place that the Trust considers appropriate and that is open during office hours; and
 - (b) must set a date, at least 30 working days after the Trust makes the proposed bylaws available, by which submissions on the proposed bylaws must be sent; and
 - (c) must ensure that the proposed bylaws are accompanied by a notice stating that—
 - (i) any person may make submissions on them; and
 - (ii) submissions must be sent to the addresses specified; and

- (iii) submissions must be sent by the date specified; and
 - (d) must add to the notice the places where the proposed by-laws are available for reading and publish it in a newspaper circulating in the locality of the Waikato-Tainui fisheries area; and
 - (e) may send a copy of the proposed bylaws, and the notice as published, to other persons or organisations that the Trust considers to have an interest in fisheries resources in the Waikato-Tainui fisheries area.
 - (2) The Trust may amend the proposed bylaws in the light of any submissions received.
 - (3) The Trust must send the Minister of Fisheries and Aquaculture—
 - (a) a copy of the final version of the proposed bylaws; and
 - (b) a statement of the reasons why the Trust considers the proposed restrictions or prohibitions comply with regulation 22(3) and (4); and
 - (c) a statement that the Trust has complied with subclause (1); and
 - (d) a recommendation that the Minister make the bylaws.
- Minister's role*
- (4) The Minister must decide whether or not the final version of the proposed bylaws would have an undue adverse effect on fishing, having regard to—
 - (a) the extent to which fishing for a species in the Waikato-Tainui fisheries area can be carried out in other areas; and
 - (b) the effect of the bylaws on the fishing of any fishery, including any fishery likely to be affected and the proportion of it that is likely to be affected; and
 - (c) the cumulative effect on fishing of the bylaws together with any existing bylaws; and
 - (d) the degree to which the bylaws will lead to the exclusion of fishing; and
 - (e) the extent to which the bylaws will increase the cost of fishing; and
 - (f) the extent to which the bylaws recognise and provide for the Waikato-Tainui environmental plan; and

- (g) the background to these regulations described in regulation 3.
- (5) The Minister must—
 - (a) make a decision under subclause (4) as soon as reasonably practicable and no more than 40 working days after receiving the material sent under subclause (3); and
 - (b) in making the decision, have no regard to whether or not time periods specified in these regulations were complied with.
- (6) Unless the Minister is satisfied that the final version of the proposed bylaws would have an undue adverse effect on fishing, the Minister must publish the version in the *Gazette* as soon as practicable.
- (7) If the Minister is satisfied that the final version of the proposed bylaws would have an undue adverse effect on fishing, the Minister must, no more than once,—
 - (a) notify the Trust as soon as practicable; and
 - (b) tell the Trust why the version would have an undue adverse effect on fishing; and
 - (c) provide the Trust with an opportunity to—
 - (i) amend the version without complying with subclauses (1) and (2); and
 - (ii) send the amended final version of the proposed bylaws to the Minister under subclause (3)(b) and (d); and
 - (d) apply subclauses (4) and (5) to the amended final version of the proposed bylaws; and
 - (e) if appropriate, apply subclause (6) to the amended final version of the proposed bylaws.

24 Whakaaetanga kohikohia may override bylaws

A whakaaetanga kohikohia issued by the Trust for the purpose in regulation 7(4)(a)(ii) prevails over bylaws made under these regulations if the whakaaetanga kohikohia and the bylaws would both apply and there is an inconsistency between them.

*Enforcement***25 Offences**

- (1) A person commits an offence against these regulations who purports to issue a whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari without being authorised to do so by these regulations.
- (2) A person commits an offence against these regulations who alters a whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari.
- (3) A person commits an offence against these regulations who fails to comply with any of regulation 16(1) to (3) or (6).
- (4) A person commits an offence against these regulations who undertakes a customary food gathering activity described in any of regulation 6(a) to (g) without being a whakaaetanga holder for the activity.
- (5) A whakaaetanga holder commits an offence against these regulations who does not comply with the whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari he or she holds.
- (6) A person commits an offence against these regulations who fails to comply with any of regulations 19 to 21.
- (7) A person commits an offence against these regulations who breaches bylaws published under regulation 23(6) without holding a whakaaetanga kohikohia that is inconsistent with the restrictions or prohibitions in the bylaws.

26 Defences

- (1) The defence to an offence under any of regulation 25(1) to (6) is in section 241 of the Fisheries Act 1996.
- (2) The following are the defences to an offence under regulation 25(7):
 - (a) the defence in section 241 of the Fisheries Act 1996:
 - (b) the defence that the defendant—
 - (i) took the fisheries resources as an inevitable consequence of the lawful taking of other fisheries resources; and
 - (ii) took reasonable precautions and exercised due diligence to avoid the taking; and

- (iii) advised the Trust as soon as practicable after the taking; and
- (iv) disposed of the fisheries resources in accordance with the Trust's directions:
- (c) the defence that the defendant—
 - (i) took the fisheries resources as an inevitable consequence of the lawful taking of sports fish; and
 - (ii) took reasonable precautions and exercised due diligence to avoid the taking; and
 - (iii) immediately returned the fisheries resources to the water.

27 Penalties

- (1) A person who commits an offence under any of regulation 25(1) to (3) is liable on summary conviction to a fine not exceeding \$20,000.
- (2) A person who commits an offence under any of regulation 25(4) to (7) is liable on summary conviction,—
 - (a) on the first conviction, to a fine not exceeding \$10,000; and
 - (b) on each subsequent conviction on any of the offences, to a fine not exceeding \$20,000 on each offence.

Administrative matters

28 Prescription and use of forms

- (1) The chief executive and the Trust may prescribe forms for the purposes of these regulations.
- (2) A whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari issued in writing or electronically is valid only if it is issued in the form prescribed by the chief executive and the Trust for the purpose.
- (3) In any other case, the prescribed form must be used but a form containing minor variations from the prescribed form is not invalid if it has the same effect and is not misleading.

29 Trust's duties, functions, and powers

The Trust—

- (a) has the functions and powers it needs for the proper administration of these regulations; and
- (b) may make a written or electronic delegation of any of its functions or powers under these regulations to an employee of the Trust on the terms and conditions specified in the delegation; and
- (c) must give the Minister of Fisheries and Aquaculture a written or electronic copy of a delegation made under paragraph (b); and
- (d) must keep the Minister of Fisheries and Aquaculture informed of its contact details; and
- (e) must not accept a payment, or a return of any other kind, for determining or granting an application for, or for issuing, a whakaaetanga kohikohia, whakaaetanga noho, or whakaaetanga hari.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

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

These regulations provide for Waikato-Tainui to manage customary fishing on the Waikato River through the issuing of customary fishing authorisations to fisheries managed under the Fisheries Act 1996. They do not derogate from requirements for authorisations in Acts of Parliament.

The regulations also provide for Waikato-Tainui to recommend to the Minister of Fisheries and Aquaculture the making of bylaws restricting or prohibiting fishing on the Waikato River of fisheries managed under the Fisheries Act 1996.

Terms used in these regulations that are defined in the Fisheries Act 1996 or the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 have the meanings given to them in the Acts. That rule does not apply if it is clear from the context that the defined term

is inappropriate—for example, in the Fisheries Act 1996 “approved” means approved by the chief executive while in these regulations it means approved by the Minister.

The relevant definitions from the Fisheries Act 1996 are “chief executive”, “commercial fishing”, “effect”, “fisheries resources”, “fishery officer”, “fishing”, “fishing permit”, “Ministry”, “possession”, “sports fish”, “taking”, “vessel”, “working day”, and any defined terms used in the definitions.

The relevant definitions from the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 are “2009 deed”, “Trust”, “Waikato-Tainui”, and any other defined terms used in the definitions.

As with all legislation, the rules and definitions in the Interpretation Act 1999 apply to these regulations as provided in section 4 of the Interpretation Act 1999.

The regulations come into force 28 days after they are notified in the *Gazette*.

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These regulations are administered by the Ministry of Fisheries.
