TE OHU KAIMOANA

MĀORI FISHERIES TRUST

1 November 2016

The Hon Bill English, Minister of Finance and Chairman Cabinet Committee for Economic Growth and Infrastructure
The Hon Nathan Guy, Minister for Primary Industries
The Hon Chris Finlayson, Minister for Treaty of Waitangi Negotiations
The Hon Te Ururoa Flavell, Minister of Maori Development
Parliament Buildings
WELLINGTON

Tena Koutou

THE FUTURE OF OUR FISHERIES CONSULTATION PROPOSALS

Te Ohu Kaimoana, the Maori Fisheries Trust has received a copy of a document entitled *Te Huapae Mataora mo Tangaroa: The Future of Our Fisheries – Volume 1 Consultation Document 2016* - prepared by the Ministry of Primary Industries (MPI).

We understand this summary document (and presumably its 3 supporting volumes which Te Ohu Kaimoana has not been privy to) is soon to be presented to the Cabinet Committee for Economic Growth and Infrastructure prior to final approval by Cabinet to enable distribution to the public for consultation.

The document proposes a new vision for New Zealand's fisheries (*Abundant fisheries and healthy aquatic environment that provide for all our people now and in the future*) and 4 overarching objectives being:

1. Objective 1: Abundant fisheries in our seas and healthy aquatic system;
2. Objective 2: Everyone plays their part in managing New Zealand's shared aquatic resources;
3. Objective 3: Everyone can share fairly in the benefits of our aquatic resources; and
4. Objective 4: The fisheries management system is widely trusted in New Zealand and internationally.

The document also promulgates 3 strategic proposals being:

1. Strategic Proposal 1 – Maximising Value from Our Fisheries;
2. Strategic Proposal 2 – Better Fisheries Information; and
3. Strategic Proposal 3 – Agile and Responsive Decision Making

The document contains several proposals which are worthy of consideration to strengthen New Zealand's fishing sector.

However, the document also contains strategic proposals which - if pursued – will undermine Iwi Maori property rights and interests confirmed as part of the 1992 Fisheries Deed of Settlement.

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Te Ohu Kaimoana has not been approached for our views on this document and how the proposals contained therein might affect Iwi Maori fisheries rights.

Te Ohu Kaimoana strongly recommends the immediate amendment of the document to exclude any draft policy proposal which is not compliant with the 1992 Deed of Settlement. To ensure the Crown does not breach Section 5(b) of the Fisheries Act 1996, the Fisheries Deed of Settlement and the Treaty of Waitangi, amendments should be made to the document before it is presented to any Cabinet Committee for approval or subsequent public release.

While time does not permit a full analysis of the document this letter sets out our immediate concerns:

Treaty Settlement Acknowledgement

The document makes reference to the Fisheries Settlement and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. However it appears to ignore the full scope of rights recognised in the Settlement when referring to the Crown's obligations.

Page 7 of the document notes (in a tautological manner) that the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Settlement) is closely linked to the Quota Management System (QMS) and has been enshrined in legislation through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. The Act provides for:

- Iwi commercial interests in fisheries, through an allocation of Individual Transferable Quota in each fish stock and a duty on the Crown to provide 20% of shares in new stocks brought into the QMS (the Maori Fisheries Act 2004 subsequently made clear this allocation is to iwi)
- A duty on the Crown to make policies and regulations for customary food gathering and acknowledge the special relationship of tangata whenua with important fishing grounds.

The document also notes "Tangata whenua are given the opportunity to input and participate in sustainability decisions (in 1992, it was not agreed which bodies would exercise Maori collective rights and the term "tangata whenua" was used to allow for all Maori to subsequently determine the appropriate bodies). Decision-makers acting under the Fisheries Act must act consistently with the Settlement Act."

The statement on page 8 that "tangata whenua are partners with the Crown in managing customary non-commercial fisheries" suggests the Crown's partnership obligations do not extend to iwi and their commercial rights under the Settlement. This is a perspective the Crown advanced during discussion over the Kermadec Ocean Sanctuary proposal and is not a position Iwi Maori and Te Ohu Kaimoana accept.

Key terms of the Deed of Settlement provide "that the Crown's Treaty duty is to develop policies to help recognise use and management practices and provide protection for and scope for exercise of rangatiratanga in respect of traditional fisheries."[1]

In the Fisheries Settlement the Crown clearly recognised that traditional fisheries include the full range of Maori fishing rights including customary non-commercial and customary commercial rights. The wording of the document conveys an impression that the Ministry does not consider Maori commercial rights granted under the Deed of Settlement have any special status over and above normal commercial quota right holders.

[1] Preamble to the 1992 Deed of Settlement – Clause K.

Our concerns are borne out by some of the proposals, which clearly have the potential to undermine the integrity of Maori property rights.

Maximising the Value of Shared Fisheries (Reallocation of TAC)

Under Strategic Proposal 1 (Option 3 – Maximising the value of our shared fisheries) the report notes "*Where the TAC for a shared fishery is increased after it has been built to higher abundance, allocation is often made on the basis of the proportion of the TAC that each sector currently holds. In the future, however, for some shared stocks we see an increasing recognition of the contribution recreational fishing generates towards maximising resource value (for example the snapper fishery in the Hauraki Gulf)*".

This is a clear statement that MPI is considering making allocative decisions based on *Strategic Proposal 1: valuing our marine ecosystems and fish resources to optimise resource utilisation* set out on page 12

This is contrary to the Utilisation Purpose of the current Fisheries Act 1996 and the Deed of Settlement. It is concerning that MPI appear to have already moved to implement this approach in PAU7 and SNA7. On page 8 of the document MPI quotes the highly contentious and challengeable Legasea valuation of the recreational sector as fact to support this idea.

Any proposal of reallocating property rights from the commercial sector to the recreational sector will be viewed as confiscation of Maori customary-commercial fishing rights under the guise of promoting abundance. This will be a significant breach of the Treaty of Waitangi and Deed of Settlement and would be vigorously opposed.

Investment in Ecosystem Based Management (Strengthen Environmental Principles)

Strategic Proposal 2 – Option 3: Investment in Ecosystem-based management states that ecosystem based management (EBFM) is a thing of the future, even though the Environmental Principles of the Fisheries Act effectively require the effects of fishing on aquatic ecosystems to be managed now. Page 22 of the document notes "*Although the Fisheries Act provides for this, the settings could be refined to deliver on stronger environmental principles and adopt international best practice such as EBFM*". This statement suggests MPI proposes to amend the environmental principles in Part 2 of the Act.

Any change to the 'front of the Act' was explicitly outside of the 2015 Legislative Review. Te Ohu Kaimoana believes any such strategic proposal would result in a fundamental change to the context of the QMS which remains fundamental to the 1992 Fisheries Settlement and therefore cannot be changed without Maori agreement.

Advocating changes to the QMS without Maori consent challenges the integrity of the 1992 Deed of Settlement and would be challenged.

Community Participation in Fisheries Management

Objective 2 of the document states "everyone plays their part in managing New Zealand's share aquatic resources". Objective 3 states "everyone can share fairly in the benefits of abundant fish in a healthy aquatic environment". The stated outcomes for these objectives (p13) do not create a clear picture of the part all citizens should play in managing aquatic resources; nor do they make clear what should be included in the definition of "fair".

Some of the stated outcomes appear impossible to measure.

While Outcome 2.4 aspires to ensure quota holders have a "duty of care", industry submissions given in 2015 focussed on the need to provide the legal means by which quota owners could translate this duty of care into effective collective action. That submission appears to have been completely ignored in this document. On the other hand, no equivalent duty of care is identified in relation to citizens who choose to fish recreationally.

Statements that "communities flourish from the benefits fisheries provide" raise questions: which communities? Is it even realistic for all such communities to "flourish" on the basis of fisheries?

It is critical in our view that there is a clear sense of what is fair. Fairness includes respect for property rights and Treaty settlements, which should not be undermined simply because of strong political pressure from the public or particular communities or sectors to have greater access to aquatic resources.

After all, Treaty Settlements address long standing claims by Maori in respect of unfair and unjust dealings of the Crown.

Recommendation

The document notes that MPI has a responsibility to act at all times in accordance with the Deed of Settlement and Settlement legislation and that "the system must deliver on the Crown's obligations to Maori."

It is Te Ohu Kaimoana's view that the Crown's obligations extend to the way policy is developed to preclude any unintended adverse effects on Maori rights and the possibility of conflict between the Treaty partners. Indeed, part of the purpose of Te Ohu Kaimoana is to assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi.[2]

This is further reinforced by section 5(b) of the Fisheries Act 1996 which states that the Act shall be interpreted, and all persons exercising or performing functions, duties, or powers conferred or imposed by or under it shall act, in a manner consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 which gave legal effect to the Deed of Settlement.[3]

It is Te Ohu Kaimoana's view that the Crown should never disseminate for public comment, proposals that compromise the Deed of Settlement or the associated QMS that provides the currency of the Settlement. Had Te Ohu Kaimoana been consulted on this matter we could have advised the Crown of the risk it now faces in choosing to promulgate these ideas – even in the form of a high-level discussion paper.

To ensure the Crown does not breach Section 5(b) of the Fisheries Act 1996 Te Ohu Kaimoana strongly recommends the document is amended immediately to exclude any draft policy proposal which is not compliant with the 1992 Deed of Settlement. Te Ohu Kaimoana recommends this is done before the document is presented to any Cabinet Committee for approval or any subsequent public release.

Te Ohu Kaimoana supports sensible changes to fisheries management which can assist in the achievement of positive outcomes for all Aotearoa and we have a responsibility to assist the Crown in

[2] Section 32(c), Maori Fisheries Act 2004.
[3] Section 5(b), Fisheries Act 1996.

the development of sound policy ideas which are cognisant of the Treaty relationship. We are available to work with officials to improve the document prior to presentation to Cabinet.

Na

Jamie Tuuta
Chairman