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**MARINE PROTECTED AREAS POLICY AND WEST COAST PROPOSALS**

**Introduction**

1. This submission is from Te Ohu Kaimoana Trustee Ltd (Te Ohu Kaimoana) in its role as corporate trustee of Te Ohu Kaimoana Trust. Te Ohu Kaimoana Trust was established under the Maori Fisheries Act 2004 to advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing and fisheries-related activities. Amongst other things, this purpose is intended to:
  - ultimately benefit the members of iwi and Maori generally
  - further the agreements made in the Deed of Settlement and to assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi
  - contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.

### **Marine Protection policies and tools need to be reviewed**

2. The reason we are making this submission is to remind the Ministry for Primary Industries and the Department of Conservation of our concerns with the Marine Protected Areas (MPA) policy and to signal our interest in participating in a review of the policy.
3. We do not intend to comment on the specific proposals for the West Coast, recently open for consultation. We acknowledge that since the West Coast Forum consulted on the initial proposals the areas proposed as marine protected areas have been reviewed and amended in response to concerns about their effects on fishing interests.
4. Nevertheless we continue to have concerns about the policy as a whole for its potential to affect Fisheries Settlement rights as it is further implemented elsewhere. We also note concerns that have been raised in submissions from the industry about the wider MPA policy, and the lack of fit between the purpose of the policy and tools for its implementation, that is, the Marine Reserves Act and use of Fisheries Act regulations to close areas to fishing or to restrict certain fishing methods.
5. We are aware of commitments that have been made by the Government, in Fisheries 2030, to review the MPA Policy. Indeed it is our understanding that this process is presently underway. In addition, the Marine Reserves Bill, which was introduced in 2002, has still to be progressed and it is our understanding that its underlying purpose is also under review. We would welcome the opportunity to participate in these review processes.

### **Issues previously raised by Te Ohu Kaimoana**

6. As you will be aware, Te Ohu Kaimoana has, over many years, made numerous submissions on the issue of spatial allocation and its effect on the Fisheries Settlement. These have included submissions on Oceans Policy, the Marine Reserves Bill, policies for managing the environmental effects of fishing and the current Marine Protected Areas Policy. Essentially these submissions have raised fundamental questions about what we mean by marine or biodiversity protection, and how initiatives in pursuit of these concepts overlap with, or have the effect of reallocating marine resources from one set of users to another. The boundary between spatial exclusions that are necessary to protect the functioning of marine ecosystems and biodiversity and those that reallocate marine space for public use and enjoyment is not clear – particularly in the way marine reserves and marine protected areas are being established under current policies using the Marine Reserves Act and regulations under the Fisheries Act. Copies of these submissions can be made available.

7. In our view, the MPA policy as it currently stands is inconsistent with traditional Maori resource management practices, which seek to provide for sustainable utilisation of the marine environment with activities and use being managed to ensure that marine biodiversity is not subject to unacceptable risks. One of our key concerns is the potential for the policy to undermine Treaty Settlement assets and rights established under the 1992 Fisheries Settlement and subsequent regulations by closing access to fisheries without:
  - adequate justification from an environmental and sustainability point of view
  - compensation for loss of access to fishing grounds where closures are not driven by clear sustainability concerns.
8. In our view the current policy runs into problems because it confuses these matters. For instance the purpose of the policy, which is to protect biodiversity through a network of MPAs, raises questions about the contribution of those MPAs to the management of biodiversity overall – especially given obligations contained in other regimes (such as the Fisheries Act) to manage the effects of activities on the “aquatic environment.” In addition, the tools for implementation are not designed for this policy: these include either marine reserves (established under the Marine Reserves Act) or regulations under the Fisheries Act. This is problematic because these tools were not designed to deliver the objectives of the MPA policy, making their use hard to justify on their own terms.
9. As noted earlier, we have made consistent attempts to bring these issues and our proposed solutions to Government’s attention - from the 2001 consultation on Oceans Policy, 2003 when the Marine Reserves Bill was first consulted upon through to 2005 with consultation on the MPA Policy and then the Policy Statement and Implementation Plan to the Sub-Antarctic MPA forum in which we were participants.
10. We have also touched on issues of spatial allocation (or re-allocation) in the context of the Aquaculture Reforms in which a regime for new aquaculture proponents to compensate affected fishing interests is provided for, where the value to New Zealand of aquaculture is found to be materially greater than fishing. We consider this approach provides a useful model for other cases in which new uses that provide greater benefits to New Zealand are proposed to replace existing ones.

#### **Matters to consider in reviewing the policy**

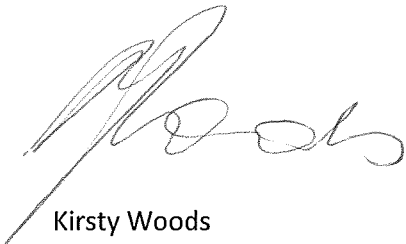
11. Te Ohu Kaimoana has offered a number of concepts or principles that we think would more appropriately form the basis for making decisions about marine protection and resource allocation. These include:

- **identify a clear purpose:** is a policy or decision intended to ensure ecological sustainability (and we do not think that biodiversity protection should be seen as separate from this) or to allocate new rights in the coastal marine area?
- **justify sustainability decisions:** if the purpose of a decision is to ensure ecosystems are sustained, any constraints on fishing rights must be based on clear reasons. There are standard risk assessment processes that can be applied.
- **in the allocation of rights to use the oceans, avoid, remedy or mitigate the effects of this use on Maori rights** (including Fisheries Settlement rights) and those of other existing rights/consent holders.
- **apply “least cost” tools:** any interventions must have the minimum effect possible on fishing rights while achieving the overall objective of sustaining ecosystems
- **adapt management approaches in light of new information:** in some instances decisions have to be made in the absence of complete information. It is important to implement a monitoring regime and to adjust the management response as new information comes to light.
- **assess the effects of new activities on existing users:** if the purpose of a policy or decision is to allocate new rights to use the coastal marine area, then the effect of that allocation on fishing rights should be assessed and the impact identified and avoided, remedied or mitigated.
- **Ensure that the impacts of a national policy on marine protection are considered from a national point of view:** while the idea of using regional forums to develop proposals within bioregions has merit, forum processes should be guided by a more nationally focussed framework that takes into account priorities in a national context. These priorities include the Crown’s obligation to protect full and final settlements, including the Fisheries Settlement. Clearly one of the areas that concerns us is the potential cumulative effect of the policy on Fisheries Settlement rights. A high level principled framework is needed that provides for resource allocation and trade-offs.
- **Engagement and consultation with Maori:** alongside the non-commercial customary fishing interests held by iwi/hapu in their own rohe , iwi have commercial interests in fisheries that are harvested in areas that extend beyond their ownrohe. Processes that encourage dialogue between all affected iwi (including manawhenua iwi) early in the process are desirable. Iwi Fisheries Forums (such as Te Waka a Maui me ona Toka and Te Taihauauru Fisheries Forum) provide a good start. Forums such as these are being established around the country and could also provide a good basis for iwi to come together nationally to discuss issues that affect all iwi. Te Ohu Kaimoana is working to put in place a suitable process for iwi to work together nationally where needed.

### **The need for a wider resource allocation policy**

12. The question of marine biodiversity protection arising from UNCLOS, the Convention on Biological Diversity and the New Zealand Biodiversity Strategy needs to be revised in light of the many problems that we have identified and in particular those matters that threaten to reopen debate on the durability of Treaty Settlements.
13. However this review can only rationally be considered as part of a much wider debate on resource use and allocation. Key questions concern:
  - the relationship between “biodiversity protection” and the sustainability of ecosystems and their components (i.e. protecting the ability of marine ecosystems to continue to deliver ecosystem services) – we view these things as one and the same
  - policies and tools needed to ensure the above
  - the boundary between decisions that are designed to ensure sustainability (as described above) and those that aim to reallocate areas of the marine environment to different uses (such as public use and enjoyment).
14. Te Ohu Kaimoana welcomes the opportunity to participate in further dialogue with officials on these matters.

Naku noa, na



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