TE OHU KAIMOANA

MĀORI FISHERIES TRUST

Supplementary Submission to

The Local Government and Environment Select Committee on the

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill

Supplementary Submission

This is a supplementary submission to our submission lodged with the Select Committee on Friday the 27th of January 2012. We await a hearing date to be set so that we can speak to our submissions in person. Those who will be attending the hearing include:

- Tania McPherson
- Kirsty Woods
- Laws Lawson
- Peter Douglas

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Overview

The purpose of this supplementary submission is to provide cross referenced additional information in support of our original submission in certain key areas including:

- Section 4 of our submission (page 8) - The Treaty Provisions are insufficient
- Subsection 4.2 (page 9) - Need for stronger duties to consult
- subsection 5.2 (page11) - Managing the effects of new activities on existing users, including fisheries rights holders and
- subsection 5.3 (page 12) - Additional measures to avoid, remedy or mitigate adverse effects of activities on existing interests

The appended documents are summarised for your quick reference below. We also provide one additional recommendation in relation to the definition of an "iwi authority" for your consideration.

Section 4 of our original submission - The Treaty Provisions are insufficient

Lawson, C. McPherson, T. and Woods, K. *The "Race for Space": Maintaining the value of fisheries rights allocated to Maori as part of Treaty Settlements in New Zealand*; paper to Sharing the Fish Conference March 2006, Perth Western Australia.

While this paper (Appendix 1) is a little dated in respect of Aquaculture reform (see further information below) it discusses clearly how fisheries Treaty settlement rights across existing marine management statutes are inconsistent in:

- the level of acknowledgement provided
- the characteristics of decision making
- the degree of protection offered and
- the incentives to avoid remedy or mitigate the effects of new activities on existing activities.

The key issues addressed here is that in combination all of these inconsistencies result in *ad hoc* protection of fisheries settlement rights which pose a significant threat to the durability of a full and final settlement with Maori.

The paper highlights why and how the Articles of the Treaty of Waitangi provides the appropriate basis for environmental and allocation decisions. It further describes how a principled approach to decision making is needed in light of the Treaty of Waitangi including a consistent approach to clarifying the purpose of any measure (i.e. sustainability of allocation). It then goes on to describe a decision making framework that provides overall consistency in decision making given the purpose of any new measure or activity.

Subsection 4.2 of our original submission - Need for stronger duties to consult "iwi authorities"

While we did not provide comment in our original submission on the definition of "iwi authority" in the interpretation section 4(2) of the EEZ Bill we would like to provide further clarification on this definition now.

Section 32 provides a process for developing or amending regulations under the new legislation that requires the Minister to consult with iwi authorities among others on the subject matter of the regulations. In addition, section 46 requires the EPA to notify iwi authorities of an application for a marine consent if it considers that the iwi authority may be affected by the application.

The EEZ bill defines an iwi authority as having the same meaning as in section 2(1) of the Resource Management Act 1991 which states "*iwi authority means the authority which represents an iwi and which is recognised by that iwi as having authority to do so*". While we do not disagree with this interpretation as far as it goes we can provide further direction on those iwi authorities who have meet the conditions of this definition in relation to criteria set out in the Maori Fisheries Act 2004 and who are strongly supported by iwi members.

We consider that this is a minimum (not a maximum) list of iwi authorities to consult on marine consent applications and regulations.

Supplementary Recommendation

We recommend that the EEZ Bill prescribe that the reference to "Iwi authority" be also cross-linked to those listed in Schedule 3 of the Maori Fisheries Act 2004 and the organisations mandated for those iwi by Te Ohu Kaimoana Trust under that Act.

Section 5 of our original submission - The Scope of the EEZ Bill in relation to fishing activity – Managing the effects of new activities on existing activities and Additional measures to avoid, remedy or mitigate adverse effects of activities on existing interests

Te Ohu Kaimoana, Submission on *Undue Adverse Effects on Fishing: Regulations under section 186ZR of the Fisheries Amendment Act*, 28 September 2011

As pointed out above the previous paper is a little dated on the topic of Aquaculture reform therefore this paper (Appendix 2) discusses:

- How a new activity (in this case the example is aquaculture but it could equally be an activity expected to be managed under the EEZ Bill) can fail the UAE Test despite the fact that its overall economic value might outweigh the existing users interests but still proceed on an agreed negotiated basis.
- The mechanics of how the agreement is established including an independent assessment of the value of the existing activity and confirmation that the new activity would have a materially greater value followed by an option for the applicant to compensate the existing user to the assessed value.