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Tena koe,

**MPI Initial Position Paper on removing constraints on the use of UBA.**

**Introduction**

Te Ohu Kaimoana Trustee Limited (Te Ohu) welcomes the opportunity to submit on the Ministry for Primary Industries' (MPIs) Initial Position Paper (IPP) on the introduction of underwater breathing apparatus (UBA), dated January 2013.

The purpose of Te Ohu is 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:

- a) ultimately benefit the members of iwi and Maori generally
- b) assist the Crown to discharge its obligations under the 1992 Fisheries Deed of Settlement and the Treaty of Waitangi and
- c) contribute to the achievement of an enduring settlement of the claims and grievances referred to in the 1992 Fisheries Deed of Settlement.

This submission does not seek to take away the right of iwi to make their own submissions on the use of UBA in commercial fisheries. Indeed we encourage iwi to make submissions on such important issues. In developing this response we have canvassed the views of iwi widely and we have talked directly to a number of iwi representatives across the country.

**BACKGROUND**

**Problem definition**

MPI states in the IPP that they have received a number of requests from industry regarding the use of UBA in some shellfish fisheries, including kina (SUR), sea cucumber (SCC), and horse mussel (HOR). The Paua Industry Council has also requested a review of the use of UBA in the Chatham Islands Paua fishery (PAU 4), for safety reasons. The IPP identifies 5 key drivers behind the proposal.

1. Consistently low harvest levels in relation to the total allowable commercial catch (TACC).
2. Difficulties in proving up the utilisation and economic potential of these fisheries, due to current fishing methods.
3. Reduced harvesting efficiency based on species distribution and free-diving limitations (i.e. the species are at low densities or are located below safe free-diving depths).
4. The vulnerability of these species to alternative fishing methods (e.g. dredging), which can cause damage to the product and/or increase by-catch and wastage.
5. Diver safety and efficiency in areas where great white shark encounters occur and appear to be increasing.

MPI state in the IPP that they are committed to actively seeking opportunities to improve benefits and sustainable use opportunities, consistent with the National Fisheries Plan for Inshore Shellfish, and the Fisheries 2030 strategy. MPI considers a review of the use of UBA is appropriate as this restriction pre-dates implementation of the QMS and the setting of total allowable catches (TACs) in these fisheries.

MPI proposes removing the current restrictions on the use of UBA. The IPP identifies 3 specific proposals for consideration:

- Proposal 1      Maintain the current regulation<sup>76</sup> of the Fisheries (Commercial Fishing) Regulations 2001, restricting the use of underwater breathing apparatus for the commercial harvest of shellfish species.
- Proposal 2      Enable the use of underwater breathing apparatus in some or all of the following developing shellfish fisheries;
- a) kina (SUR)
  - b) sea cucumber (SCC)
  - c) horse mussel (HOR) and/or
- Proposal 3      Enable the use of UBA in the PAU4 fishery to address safety concerns related to diver-shark interactions.

MPI proposes a range of regulatory/compliance tools that could be implemented in the event the Minister approves either options 2 or 3. These tools range from no additional regulatory tools to requiring increased reporting and other compliance measures. There are 5 options.

Option 1	No regulatory controls
Option 2	Mandatory use of automatic location communicators (ALCs) when commercially fishing for any of those species where the use of UBA is allowed
Option 3	Prohibit the use of UBA if shore-diving (i.e. use of UBA requires a vessel equipped with an automatic location communicator).
Option 4	Prohibit the use of possession of UBA when taking, or in the possession of, any other fish, aquatic life, or seaweed.
Option 5	Increased reporting obligations including: <ul style="list-style-type: none"> <li>• The method of harvest to be reported as diving using UBA versus free diving (new method code required),</li> <li>• Finer spatial scale reporting (e.g. using the paua statistical reporting areas),</li> <li>• Recording latitude and longitude of catch,</li> <li>• Requiring the names of divers to be included on reporting forms</li> </ul>

## TE OHU'S POSITION ON UBA PROPOSALS

Te Ohu:

In relation to the Chatham Islands:

- a) Supports the use of UBA for harvesting horse mussels, sea cucumber, and kina
- b) Recommends that scallops, whelks, drift seaweeds, undaria, wild mussels, starfish, and surf clam species is added to the schedule of fish species that can be harvested using UBA
- c) Recommends the Minister instruct MPI to work with relevant quota owners and iwi to develop management plans for any fish species taken commercially using UBA, before any commercial fishing using this method commences.

In relation to the North and South Islands:

- d) Supports the use of UBA for harvesting horse mussels and sea cucumbers
- e) Opposes the use of UBA for commercial harvest of kina in all QMAs, except SUR1A
- f) Recommends that scallops, whelks, drift seaweeds, undaria, wild mussels, starfish, and surf clam species are added to the schedule of fish species that can be harvested commercially using UBA.
- g) Recommends the Minister instruct MPI to work with relevant quota owners and iwi to develop management plans for any fish species taken commercially using UBA, before commercial fishing using this method commences.
- h) Recommends excluding important mahinga kai from areas where UBA can be used commercially
- i) Recommends that measures are put in place to prevent anyone using UBA holding or fishing Paua ACE in any year.

## GENERAL COMMENTS

### Consultation

From the outset we wish to express our concern at the way in which MPI has consulted with iwi and Te Ohu on proposals to allow under water breathing apparatus (UBA) to be used in a range of commercial fisheries. For instance Ngati Kahungunu, one of the largest iwi in New Zealand, tells us they only found out about the proposal after receiving an industry weekly report. In this particular case direct contact by MPI with this iwi should have been given priority given their commercial and non-commercial interests in SUR2A and SUR2B. Te Ohu is disappointed by the lack of quality consultation by industry and MPI on a fish stock of high cultural importance to Maori.

Te Ohu would have welcomed being involved in developing these proposals much earlier. We could have worked together with MPI and the industry to build better proposals and remove uncertainties by providing the information needed to make robust decisions.

We are also concerned that the proposals that have been released have not involved input from all quota owners. As far as kina are concerned we understand the proposal was only intended to cover the SUR 2 QMA, although Te Ohu and other SUR2 quota owner were never invited to discuss it. This is despite our comments to MPI in 2010 that there should be direct dialogue with iwi on the use of UBA in commercial fisheries. This has obviously not occurred. It is not clear how the proposals were broadened to cover the whole country. In any event the process has resulted in a great deal of opposition. Our understanding of the National Kina Association is at their last AGM it was said SUR 2 was advancing the UBA proposal and that the South Island QMAs were neither for nor against. If

anything they were happy to continue as a free dive fishery. If the industry has decided to do something else then we as a member of the national Kina Industry Association know nothing about that.

The process has resulted in opposition from most North and South Island iwi because of their concern that important mahinga kai areas for kina will be adversely affected by the use of UBA, and the lack of opportunity to work through in detail how the use of UBA might be managed to ensure these areas are not affected.

Ultimately, we recommend the whole process in relation to kina be rerun to ensure there is a more robust proposal put up for consultation, and that consultation with iwi is conducted properly.

The only clear iwi support for the use of UBA in the commercial kina fishery is in SUR4 (Chatham Islands) and SUR1A (Te Hiku o Te Ika).

### **Support in principle for UBA in commercial fisheries**

Te Ohu is supportive in principle of UBA being used in commercial fisheries but subject to adequate provisions being put in place to protect customary non-commercial interests and the sustainability of the fishery. Development of any fishery should not be at the expense of sustainability or customary non-commercial fishing interests. We agree with the idea that the method of extraction shouldn't matter provided it is environmentally responsible.

Reasons for our support in principle include:

1. The regulations are outdated and there is a need to remove impediments that unnecessarily prevent the further development of new and existing commercial stocks. UBA will potentially open access to larger amounts of kina, sea cucumber, horse mussel and potentially a range of other stocks.
2. UBA will provide greater efficiencies, lower unit costs, and provide better margins.
3. UBA will enable fishers to be more selective in their harvesting activities (size and quality), therefore potentially leading to improved fishery management strategies. The Paua and Coromandel Scallop industries are making excellent progress in developing new and smarter ways to collect catch information and apply it in a management context. These advances in technology and management should be applied in fisheries that involve UBA. Te Ohu would welcome the opportunity to work with iwi, industry and MPI in developing systems and processes needed to effectively and efficiently run UBA fisheries.
4. The value of iwi assets and their potential earning capacity could increase as a result of being able to gain better access to particular fish stocks. The opportunity also exists for iwi, especially those who have members who use UBA, to create new job opportunities in existing and developmental stocks. Iwi are increasingly looking for opportunities to create jobs and these proposals go some way to helping to achieve this outcome. Therefore, Te Ohu would not support Option 3 in MPIs proposed management framework to prohibit shore diving.
5. In relation to the Chatham Islands we support the need to protect divers from Shark attacks. There has already been a Shark attack in the Chathams involving a paua diver losing his lower arm. Paua divers have also reported shark sightings in recent times. The shark risk applies to all dive fisheries on the island, including those that remain undeveloped.
6. We also note:
  - a. the recent UBA trials on the Chathams that have been supported by MPI
  - b. the infrastructure that PAUAMAC4 has in place to properly manage the use of UBA in the PAU4 fishery

- c. the intention of SUR4 quota owners to form a commercial stakeholder organisation and framework to support the use of UBA in the commercial kina fishery
- d. the level of support from iwi and the broader Chatham Islands community for the use of UBA in commercial fisheries

### **The Kina Fishery**

Despite our comments above, at this time we do not support the use of UBA for commercially harvesting kina in the majority of SUR QMAs. We can support UBA in SUR4 and SUR1A because these areas appear to have clear support from iwi and industry. In SUR1A, kina barrens are said to be increasing and need to be brought under control. UBA will provide greater access to these stocks and at the same time provide local Maori families involved in the industry with jobs. In the Chatham's it's a similar situation. The creation and security of jobs is important for supporting the island's economy.

There is some support from iwi in SUR9 (approximate areas - North Cape to Mokau River), SUR1B (East Cape to Whangarei), and SUR2A (East Cape to Napier) for UBA and kina, but there is also opposition. Because of the process nobody has taken the initiative to bring the relevant iwi around the table to see if there is a way for all parties to be satisfied. We recommend that MPI speaks to the relevant iwi as soon as possible with a view to finding a solution.

In the majority of QMAs iwi are opposed because of the cultural importance of kina to all Maori. There is no support from South Island iwi for UBA and kina. There is however some support for species other than kina, to be caught commercially using UBA.

Some of the reasons why iwi oppose the Kina proposals include:

1. Kina is an iconic stock for Maori. Iwi are concerned that the introduction of UBA will put stocks at risk. It is unclear how MPI or industry proposes to manage the fisheries and there is no plan.
2. The lack of consultation by MPI and industry on the proposal (see above).
3. The lack of industry structure and governance to manage the fishery on behalf of its members provides no confidence that the kina industry can manage effectively at this time. We note the positive actions by industry in the Chathams to work with iwi.
4. Kina beds can collapse if they are not properly managed. In the 1970s and 1980s, and in more recent times, kina paddocks are known to have been depleted and these have never recovered. The concern is there will be more of this if UBA is approved. Industry collaboration is essential for good management and ensuring this does not happen again.
5. Industry proposes to target stocks in deeper water. However removal of too many kina from deeper waters is likely to impact the replenishment of the populations in shallow water (3 to 10m). Furthermore, customary divers also target deep water stocks down to at least 23m. It makes more sense for industry to fish and develop beds that are away from traditional customary fisheries or mahinga kai areas
6. Some iwi only have discrete areas from which they can harvest their customary kina. The Tauranga moana area is a good example. Most of its beaches are sand and kina are mainly obtained from the offshore islands. Commercial fishing in these island areas with UBA will potentially put iwi in a worse position. These areas should be recognised as important mahinga kai and access agreements resolved in the first instance between iwi and industry. This could involve commercial UBA use being barred from these areas.

7. Compliance – iwi are concerned that the use of UBA (not including the Chatham Islands) could open opportunities for industry to stock pile paua (on the mainland) while fishing for other species. A potential solution to this problem could be to prevent ACE holders that use UBA from being able to have paua ACE in any one year.
8. The tools identified in section 5 of the IPP will on their own do little to protect the fishery and important mahinga kai areas from depletion or collapse. Management tools should include:
  - Fisheries management plans: The ability of sectors and iwi to set appropriate minimum stock levels inside and outside important mahinga kai areas. A similar processes is used by the National Rock Lobster Management Group and it works.
  - Finer scale management: The existing statistical areas are too big. Some kina beds should be managed on a reef or area basis.
  - Non UBA Areas: The ability for MPI, Industry and iwi to agree no go areas for commercial fishermen using UBA. MPI should canvas iwi for areas before any constraints on UBA use are removed.

### **Cultural Value**

The IPP lacks adequate recognition of cultural values and places far greater emphasis on commercial value. For example SUR2A and SUR2B are supposed to generate an additional \$350,000 annually but there is no recognition of the value of kina to Maori. Our understanding from Ngati Kahungunu is the maintenance of their customary non-commercial interests is worth much more than the economic value MPI is trying to create from this very important fishery. For Ngati Kahungunu, they have a network of Marae along their entire coastline and each of these has their own traditional fishing areas. The maintenance of these interests is paramount. Several iwi share this view in their respective areas.

In Te Hiku O Te Ika and Tairāwhiti, iwi believe they can find the right balances. They have no difficulty with UBA being used for commercial harvest of kina. As previously stated Te Ohu supports the use of UBA in principle but there must be measures in place to ensure sustainability and the protection of customary non-commercial interests.

### **Other Stocks**

There is a range of stocks that Te Ohu believes should have been included in the IPP i.e. scallops, surf clam species, whelks, drift seaweeds, wild mussels, and undaria. Some of these species are located in the same habitats as horse mussel and sea cucumber, and could be harvested as multi species. There is some support from iwi across the country to have the above species included in any schedule that allows UBA use.

### **ALCs**

Our experience in the geoduc fishery has been that ALCs don't work on day vessels because they must run for 24hrs and this creates safety and logistical issues. We would be interested in a conversation with MPI around what they hope to achieve by having these locators on every vessel. Are there alternative ways MPI can meet their needs? Are there other devices that could be used, for example the data loggers used in the paua industry?

Finally, we would like to restate our offer to MPI to work with them, industry and iwi to develop better proposals for commercial use of UBA. If you would like to discuss any matters raised in this submission please do not hesitate to contact the writer on 049319512 or 0212275289.

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